

EXHIBIT 1

**UNREDACTED VERSION
OF DOCUMENT SOUGHT
TO BE SEALED**

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

WAYMO LLC,)
Plaintiff,)
vs.) Case No.
UBER TECHNOLOGIES, INC.;) 17-cv-00939-WHA
OTTOMOTTO, LLC; OTTO TRUCKING LLC,)
Defendants.)

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VIDEOTAPED DEPOSITION OF MICHAEL J. WAGNER

San Francisco, California

Friday, September 22, 2017

Volume I

Reported by:

MARY J. GOFF

CSR No. 13427

Job No. 2714429

PAGES 1-145

Page 1

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<p>1 UNITED STATES DISTRICT COURT 2 NORTHERN DISTRICT OF CALIFORNIA 3 SAN FRANCISCO DIVISION 4 5 _____ 6 WAYMO LLC,) 7 Plaintiff,) 8 vs.) Case No. 9 UBER TECHNOLOGIES, INC.;) 17-cv-00939-WHA 10 OTTOMOTTO, LLC; OTTO TRUCKING LLC,) 11 Defendants.) 12 _____) 13 14 HIGHLY CONFIDENTIAL 15 16 Videotaped Deposition of MICHAEL J. WAGNER, 17 Volume I, taken on behalf of Defendants, 18 at Morrison & Foerster, 425 Market Street, 19 33rd Floor, San Francisco, beginning at 20 9:34 a.m. and ending at 12:30 p.m., on 21 September 22, 2017, before MARY GOFF, Certified 22 Shorthand Reporter No. 13427. 23 24 25</p>	<p>1 APPEARANCES CONTINUED: 2 3 For Defendants Uber and Ottomotto 4 Morrison & Foerster LLP 5 BY: RACHEL S. DOLPHIN 6 Attorney at Law 7 425 Market Street 8 33rd Floor 9 San Francisco, California 94105 10 rdolphin@mofo.com 11 415-268-7263 12 13 For Defendant Otto Trucking LLC 14 Goodwin Procter LLP 15 BY: BRETT SCHUMAN 16 Attorney at Law 17 Three Embarcadero Center 18 San Francisco, California 94111 19 bschuman@goodwinlaw.com 20 415-733-6021 21 22 Also Present 23 Kevin Foor, Videographer 24 25</p>
<p>1 APPEARANCES: 2 3 For Plaintiff 4 Quinn Emanuel Urquhart & Sullivan, LLP 5 BY: DAVID EISEMAN 6 Attorneys at Law 7 50 California Street 8 22nd Floor 9 San Francisco, California 94111 10 davideiseman@quinnemanuel.com 11 415-875-6600 12 13 For Defendant Uber 14 Susman Godfrey LLP 15 BY: MATTHEW R. BERRY 16 Attorney at Law 17 1201 Third Avenue 18 Suite 3800 19 Seattle, Washington 98101 20 mberry@susmangodfrey.com 21 206-373-7394 22 23 24 25</p>	<p>1 INDEX 2 3 WITNESS EXAMINATION 4 MICHAEL J. WAGNER 5 Volume I 6 BY MR. BERRY 7, 142 7 BY MR. SCHUMAN 126 8 9 10 EXHIBITS 11 NUMBER DESCRIPTION PAGES 12 Exhibit 2271 Expert Report of 18 13 Michael J. Wagner, 8/24/17 14 Exhibit 2272 Expert Reply Report of 18 15 Michael J. Wagner, 9/14/17, Vol A 16 Exhibit 2273 Project Rubicon, 2019 52 17 Volume Recommendation, 5/20/16 18 Exhibit 2274 Defendants' Second Supplemental 91 19 Responses to Waymo's First Set of 20 Common Interrogatories Nos. 1-3 21 Exhibit 2275 Kit for OTR Trucking Market 98 22 23 PREVIOUSLY MARKED EXHIBITS: 24 Exhibit 299 NewCo Review, Qi Exhibit 299 69 25</p>

Page 2

Page 4

Page 3

Page 5

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1	San Francisco, California		1	When were you first retained?	09:36:35
2	Friday, September 22, 2017		2	A Well, I was first contacted on June 13 of	09:36:37
3	9:34 a.m.		3	2017, to run conflicts to see if I could be	09:36:41
4	THE VIDEOGRAPHER: Good morning. We are		4	considered as an expert for Waymo.	09:36:45
5	going on the record at 9:34, on September 22 of the	09:34:29	5	I -- then I had a more substantive	09:36:48
6	Year 2017. Please understand microphones are very	09:34:35	6	conversation on June 15. I don't think I was	09:36:50
7	sensitive, and they may pick up whispering ad	09:34:42	7	retained at that point, because I was told they were	09:36:54
8	private conversations and cellular interference.	09:34:44	8	still considering another expert besides me. And	09:36:56
9	Please turn off your cell phones or place	09:34:49	9	then I think shortly after that I was retained, but	09:36:59
10	them away from the microphones, as they may	09:34:51	10	I can't give you the date.	09:37:02
11	interfere with the audio. Audio and video recording	09:34:54	11	Q Within days?	09:37:03
12	will continue to take place unless all parties agree	09:34:57	12	A Within days.	09:37:04
13	to go off of the record.	09:35:01	13	Q Who retained you?	09:37:05
14	This is Disc 1, Volume I in the video	09:35:03	14	A The -- the law firm of Quinn Emanuel.	09:37:09
15	deposition of Michael J. Wagner, taken by counsel	09:35:06	15	Q And, sir, when you did you start work in	09:37:11
16	for Defendants in the matter of Waymo LLC v. Uber	09:35:10	16	this case?	09:37:14
17	Technologies. It's filed in the United States	09:35:16	17	A I would say I probably didn't do much in	09:37:14
18	District Court, for the Northern District of	09:35:19	18	the way of substantive work until July of this year.	09:37:17
19	California, Case No. 17-cv-00939-WHA.	09:35:21	19	Q And, sir, your hourly rate is 895 an hour;	09:37:23
20	This is being taken at Morrison &	09:35:29	20	is that right?	09:37:27
21	Foerster. They're at 425 Market Street in	09:35:31	21	A Yes.	09:37:28
22	San Francisco. My name is Kevin Foor, and I am here	09:35:35	22	Q And is it also correct that you receive a	09:37:28
23	with Mary Goff-Sharma, and we are from Veritext.	09:35:40	23	portion of Litinomics' revenues?	09:37:31
24	I'm not related to any party nor am I financially	09:35:45	24	A For other professionals that bill time to	09:37:33
25	interested in the outcome in any way.	09:35:49	25	this project, depending on their level, I get a	09:37:35
Page 6			Page 8		
1	Counsel and -- and all present in the	09:35:52	1	percentage of what they charge and we collect.	09:37:38
2	room, everyone attending remotely will now state	09:35:54	2	Q And, sir, how many individuals at	09:37:40
3	their appearances for the record, please	09:35:58	3	Litinomics have billed time to this matter?	09:37:42
4	MR BERRY: Matt Berry from Susman Godfrey	09:36:01	4	A Eight.	09:37:45
5	on behalf of Uber	09:36:03	5	Q How many hours total have you billed?	09:37:49
6	MS DOLPHIN: Rachel Dolphin, Morrison &	09:36:04	6	A Through our last bill, which is	09:37:52
7	Foerster, on behalf of Uber and Ottomotto	09:36:05	7	September 15, I have billed 64 hours.	09:37:54
8	MR SCHUMAN: Brett Schuman, from Goodwin	09:36:09	8	Q That -- those hours run through	09:38:01
9	Procter, on behalf of Otto Trucking LLC	09:36:09	9	September 15?	09:38:03
10	MR EISEMAN: David Eiseman, from Quinn	09:36:12	10	A Through September 15.	09:38:04
11	Emanuel, on behalf of Plaintiff Waymo	09:36:13	11	Q What about the eight others at Litinomics?	09:38:07
12	MICHAEL J WAGNER,	09:36:16	12	How many hours have they billed total?	09:38:12
13	being first duly sworn or affirmed to testify to the	09:36:16	13	A Well, the total billing through that date	09:38:14
14	truth, the whole truth, and nothing but the truth,	09:36:16	14	is 1,189.4 hours. So subtract 64 from that, and	09:38:16
15	was examined and testified as follows:	09:36:16	15	that's the others.	09:38:24
16		09:36:16	16	Q And what are the billing rates for the	09:38:25
17	EXAMINATION BY COUNSEL FOR THE DEFENDANTS	09:36:16	17	others? What's -- what's the range there?	09:38:27
18	BY MR BERRY:	09:36:25	18	A You know, I would say the senior-most	09:38:30
19	Q Good morning, sir	09:36:26	19	person that billed time besides me is around 550 an	09:38:33
20	A Good morning	09:36:26	20	hour, and probably the cheapest is about \$175 an	09:38:36
21	Q Could you please state your name?	09:36:27	21	hour.	09:38:41
22	A Michael Joseph Wagner	09:36:29	22	Q Sir, what's the total dollar value of the	09:38:41
23	Q I would like to talk to you first about	09:36:30	23	billing in this case?	09:38:44
24	when you were retained, some of the details about	09:36:33	24	A \$418,437.	09:38:45
25	your retention here	09:36:34	25	Q Sir, is this the first time that you have	09:38:56
Page 7			Page 9		

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1	been retained by Quinn Emanuel?	09:38:58	1	And I believe the award in the case was 900 million.	09:41:01
2	A No.	09:39:00	2	Q And who was your client in that case or --	09:41:08
3	Q How many times have you been?	09:39:01	3	A That's --	09:41:11
4	A You know, I -- I -- I have been in this	09:39:03	4	Q -- which side were you on?	09:41:11
5	business for 40 years. You know, I would say I have	09:39:04	5	A -- I was on the Plaintiff's side --	09:41:12
6	probably done 10 to 12 cases with Quinn Emanuel.	09:39:07	6	Q Okay.	09:41:14
7	Q What about -- have you been retained by	09:39:11	7	A -- and -- like, I can remember the venue	09:41:14
8	Google before?	09:39:13	8	was in Oregon. And you can probably find it on my	09:41:18
9	A Yes.	09:39:13	9	CV. And if you showed me on -- my CV, I could find	09:41:23
10	Q How many times?	09:39:14	10	it for you.	09:41:24
11	A One -- I know for sure once. I think	09:39:14	11	Q And, sir, you testified at trial in that	09:41:25
12	twice.	09:39:23	12	case?	09:41:28
13	Q And, sir, do you have a deposition	09:39:24	13	A I did.	09:41:29
14	scheduled for tomorrow?	09:39:26	14	Q And the award, you said, was how much?	09:41:30
15	A No. I have a deposition scheduled for	09:39:28	15	A I think it was -- I think -- my	09:41:31
16	Monday, Tuesday, and Friday of next week.	09:39:30	16	recollection was 900 million.	09:41:32
17	Q And where is the deposition on Monday?	09:39:33	17	Q And, sir, you have had your opinions	09:41:36
18	A I don't know the location yet. I'm hoping	09:39:35	18	excluded by courts in past cases; is that correct?	09:41:43
19	it's the Bay Area, but it may be Texas. I still	09:39:37	19	A I have had -- in -- in one case in my	09:41:47
20	haven't been told.	09:39:42	20	career I was completely excluded. I have a number	09:41:48
21	Q And would you have been available to sit	09:39:43	21	of the cases where some portions of my work were not	09:41:51
22	for a deposition tomorrow?	09:39:46	22	permitted to be introduced at trial.	09:41:54
23	A It's possible I could have set tomorrow.	09:39:48	23	Q In which case was it completely excluded?	09:41:56
24	Q Sir, are you submitting a Declaration in	09:39:51	24	Were you completely excluded?	09:41:59
25	support of Waymo's opposition to the Daubert motion	09:39:53	25	A Intellectual Ventures versus Xilinx.	09:41:59
	Page 10			Page 12	
1	against you?	09:39:57	1	Q In Delaware?	09:42:02
2	A No one has asked me to do that	09:39:58	2	A Yes. In front of Judge Stark.	09:42:03
3	Q You have no plan to do so?	09:40:00	3	Q And then in other cases, certain of your	09:42:08
4	A Well, I think it's due today And I think	09:40:01	4	opinions have been excluded, but not all; is that	09:42:11
5	you're going to monopolize most of my day, so I	09:40:04	5	fair?	09:42:14
6	would say probably not	09:40:07	6	A Correct. Yes, that's -- that's fair.	09:42:15
7	Q You -- you have not been asked to do --	09:40:08	7	Q And how many cases would that be?	09:42:16
8	A I --	09:40:09	8	A I -- I want to say nine or 10.	09:42:18
9	Q -- so?	09:40:09	9	Q When was the most recent one?	09:42:21
10	A -- I have not been asked	09:40:10	10	A I -- I -- I have no recollection of that.	09:42:22
11	Q Sir, how many cases have you worked on	09:40:20	11	Q Was it recently?	09:42:26
12	where you have provided a damages model in excess of	09:40:22	12	A You know, probably in the last couple of	09:42:32
13	\$1 billion?	09:40:25	13	years, but I -- I really don't have any recollection	09:42:33
14	A Probably two other cases	09:40:30	14	when the last one was.	09:42:36
15	Q What were those cases?	09:40:32	15	Q Sir, had you had an opinion excluded for	09:42:38
16	A One was the Apple/Samsung trial where	09:40:33	16	failure to consider relevant evidence?	09:42:39
17	although I was a Defendant, my initial damage claim	09:40:37	17	A Yes, that -- that was -- that was, I	09:42:44
18	in that case was in excess of a billion dollars for	09:40:39	18	think, the grounds in the Xilinx matter.	09:42:44
19	the Defendant	09:40:42	19	Q And, sir, have you had an opinion excluded	09:42:48
20	The -- I believe the Apple number was like	09:40:43	20	as not reliable?	09:42:51
21	2 3 billion So it was a significantly less, but it	09:40:46	21	A Probably. For that one portion that was	09:42:54
22	was still in excess of a billion dollars	09:40:50	22	excluded, I would think probably that was a reason	09:42:58
23	The other case was -- and I -- I	09:40:52	23	at -- at least once or twice.	09:43:01
24	apologize I can't remember the -- the -- the	09:40:57	24	Q And, sir, have you had an opinion excluded	09:43:02
25	Plaintiff, but the Defendant was DaimlerChrysler	09:40:59	25	as being too speculative?	09:43:04
	Page 11			Page 13	

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1 A Well, you cited one where it was a method 09:43:07	1 Q How many of those 2,586 documents did you 09:44:53
2 patent, and the judge sustained -- or did not grant 09:43:10	2 personally look at? 09:44:56
3 any of the Daubert motions against me except for 09:43:13	3 A Well, I only looked at -- at -- there may 09:44:57
4 one. And that was on the royalty base, and it was 09:43:15	4 be a few beyond that. I -- I looked at the 09:45:00
5 for your firm. 09:43:18	5 documents that are in Volumes 2 through 9 of my 09:45:02
6 Yeah. And that -- and he said it was 09:43:20	6 report, the ones that I'm relying upon. But I'm 09:45:05
7 speculation to apply my rate, which he wasn't going 09:43:22	7 sure I read a couple of other ones, but I can't tell 09:45:09
8 to allow the jury to hear. But I had no base 09:43:25	8 you the number. 09:45:12
9 because your client and your law firm couldn't give 09:43:28	9 Q So the documents in Volumes 2 through 9 09:45:13
10 me the -- the amount of use. 09:43:31	10 are the ones that you considered? 09:45:16
11 Q So -- so the answer to my question was 09:43:33	11 A Yes. 09:45:18
12 yes? 09:43:34	12 Q Okay. 09:45:18
13 A Yes. 09:43:35	13 A No. I relied upon. 09:45:18
14 Q And that was Judge Settle? 09:43:35	14 Q And you replied upon. 09:45:19
15 A I don't remember the name of the judge. 09:43:37	15 A All of the 2,586 documents were considered 09:45:19
16 Q Whatever the name of the judge was, he 09:43:39	16 by either me or my staff. 09:45:23
17 excluded your opinion as too speculative, correct? 09:43:40	17 Q Okay. But for the documents in Volumes 2 09:45:25
18 A Well, yeah. At -- in the royalty base, 09:43:43	18 through 9, you personally looked at each of those? 09:45:27
19 which is normally something that, you know, I don't 09:43:44	19 A Yes. 09:45:30
20 have much, you know, opinion about, it's -- it's 09:43:47	20 Q And those are the documents that you're 09:45:30
21 normally something that's assembled and I apply a 09:43:49	21 relying on? 09:45:32
22 rate to. The -- what I provide value to is the 09:43:52	22 A Correct. 09:45:32
23 rate, and that was not excluded. 09:43:55	23 Q And if they're -- the document is not 09:45:33
24 Q Sir, that was your opinion in that case 09:43:57	24 identified in Volumes 2 through 9, you're not 09:45:34
25 that was excluded, right? 09:43:59	25 relying on it; is that fair? 09:45:38
Page 14	Page 16
1 A Well, I didn't have an opinion on use, so 09:44:00	1 A No. Because I -- I also submitted a Reply 09:45:41
2 no, there was no opinion on use. 09:44:02	2 Report. And if there's another document at Tabs B 09:45:44
3 I was instructed by you -- your firm to 09:44:04	3 or C, I'm relying upon that as well. With that 09:45:47
4 assume all of the products sold by Ford, practiced 09:44:08	4 clarification, the answer is yes. 09:45:49
5 the method. 09:44:12	5 Q Okay. So let's move on to your Reply 09:45:51
6 Q Sir, it was your opinion that was 09:44:13	6 Report then. And it identifies 3,017 documents 09:45:52
7 excluded, right? 09:44:15	7 considered, right? 09:45:56
8 A With -- with that explanation, yes. 09:44:16	8 A Correct. 09:45:58
9 Q And you're saying it wasn't your fault? 09:44:18	9 Q And does that list of 3,017 documents 09:45:58
10 A No. Because I asked them. I asked them 09:44:20	10 include all the ones that you identified in your 09:46:02
11 to do a survey. They didn't. I knew that -- I 09:44:22	11 Opening Report? 09:46:05
12 knew -- I know what you have to do on method 09:44:25	12 A I would assume so, yes. 09:46:11
13 patents, and -- and I knew it was a problem. 09:44:27	13 Q So the difference between the two that -- 09:46:18
14 Q Did you sign your report in that case? 09:44:30	14 the additional documents considered would be 431, is 09:46:20
15 A I did. 09:44:32	15 that about right? 09:46:24
16 Q And it was your opinion, right? 09:44:33	16 A I haven't done the math. But every number 09:46:26
17 A The opinions that I expressed in my report 09:44:35	17 you have said so far is accurate, so I'll accept 09:46:28
18 were mine. 09:44:37	18 your -- 09:46:30
19 Q Sir, in this case in your report you have 09:44:38	19 Q Is -- 09:46:31
20 a portion where it has "Documents Considered," 09:44:40	20 A -- representation. 09:46:31
21 right? 09:44:42	21 Q -- is there a way to identify which are 09:46:31
22 A Correct. 09:44:43	22 the new documents that you looked at for your 09:46:34
23 Q And you identified 2,586 documents in your 09:44:44	23 written -- Reply Report? 09:46:36
24 Opening Report that were considered, right? 09:44:48	24 A Yes, I could -- I guess you could do a 09:46:40
25 A Correct. Listed on 131 pages. 09:44:50	25 document compare between the two. 09:46:41
Page 15	Page 17

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1 Q Let me go ahead and hand you copies of 09:46:43	1 A I believe that's correct. Because if -- 09:50:27
2 your reports. 09:46:46	2 if it was a document that already existed, I think 09:50:28
3 (Exhibit 2271 was marked for 09:47:25	3 the reference in the footnote would be to one of the 09:50:31
4 identification and is attached to the transcript.) 09:47:25	4 original Volumes 2 through 9. 09:50:34
5 Q (BY MR. BERRY) Sir, I have handed you 09:47:51	5 Q And, sir, for your Reply Report we have 09:50:36
6 what's been marked as Exhibit 2271, which is your 09:47:53	6 your list of documents considered. But if we want 09:50:38
7 Opening Report, and Exhibit 2272, which is your Rely 09:47:56	7 to find out which documents you actually relied 09:50:41
8 Report. 09:48:00	8 upon, those are the documents in Tabs B and C? 09:50:43
9 (Exhibit 2272 was marked for 09:48:01	9 A Yes. 09:50:46
10 identification and is attached to the transcript.) 09:48:01	10 Q And -- and no other document? 09:50:47
11 Q (BY MR. BERRY) Do you have those? 09:48:02	11 A Correct. 09:50:48
12 A I do. 09:48:03	12 Q Sir, you signed your Opening Report on 09:50:59
13 Q Would you look at Exhibit 2272, your Reply 09:48:03	13 August 24, 2017; is that right? 09:51:01
14 Report, and show me how we can identify which are 09:48:06	14 A Yes. 09:51:04
15 the new documents you considered for your reply. 09:48:10	15 Q And Mr. Bratic served his report on 09:51:04
16 A Well, I would have to also use 09:48:13	16 September 7, 2017? 09:51:07
17 Exhibit 2271. 09:48:15	17 A Yes. 09:51:08
18 Q Absolutely. 09:48:17	18 Q And then you served a Reply Report on 09:51:09
19 A The both lists are in alphabetical order. 09:48:19	19 September 14, 2017, right? 09:51:13
20 So again, you would have to go through and do a 09:48:59	20 A Yes. 09:51:15
21 document compare. 09:49:03	21 Q And in your Reply Report, sir, you say 09:51:15
22 And whenever a new document with that 09:49:04	22 that, None of the opinions expressed by Mr. Bratic 09:51:18
23 letter is included in Exhibit 2272, that would be in 09:49:06	23 or Mr. Malackowski has caused me to change the 09:51:21
24 addition to a document that was on the list of 09:49:13	24 opinions and conclusions -- and conclusions that I 09:51:24
25 documents considered in Exhibit 2271. 09:49:15	25 reached in my Opening Report. And I continue to 09:51:26
Page 18	Page 20
1 Q But sitting here right now, sir, you can't 09:49:19	1 hold the opinions and conclusions expressed in my 09:51:30
2 tell us what the new documents are that you 09:49:21	2 Opening Report. 09:51:33
3 considered for your Reply Report? 09:49:24	3 And that was true, sir, when you submitted 09:51:34
4 A Well, I mean, I could tell you a small 09:49:26	4 your Reply Report, right? 09:51:36
5 subset of them. As an example, you know, 09:49:28	5 A Yes. 09:51:39
6 Mr. Malackowski's report and Mr. Bratic's report, I 09:49:30	6 Q And does that remain true today? 09:51:40
7 know those are new. 09:49:34	7 A Yes. 09:51:42
8 Q Do you, sir, have a list of documents -- 09:49:35	8 Q Sir, the Stroz report has recently been 09:51:46
9 additional documents that you considered for you 09:49:37	9 produced. Have you seen a copy of that? 09:51:50
10 your Reply Report? 09:49:40	10 A I don't believe so. 09:51:52
11 A Nothing has been prepared for at least my 09:49:40	11 Q Do you know what the Stroz report is? 09:51:52
12 view, except for the document that's attached as 09:49:43	12 A I don't believe so. Oh -- oh, yeah. I'm 09:51:54
13 Tab 4 to Exhibit 2272. 09:49:47	13 sorry. Yes, I do. 09:51:56
14 Q And the only way to use your reports to 09:49:50	14 Q And -- 09:51:57
15 identify the new documents you considered for the 09:49:54	15 A I know what it is. I have not seen it. 09:51:58
16 Reply Report is to go through 3,000 documents to try 09:49:56	16 Q Has your team seen it? 09:52:00
17 to match them up? 09:50:00	17 A To my knowledge, they have not. They have 09:52:02
18 A No. There's another way. And probably 09:50:02	18 not communicated that to me, if they have. 09:52:05
19 the more important way to determine the new 09:50:04	19 Q And that's not something that you need for 09:52:05
20 documents I'm replying upon is, again, by looking at 09:50:08	20 the opinions that you rendered in -- in your -- in 09:52:08
21 documents that are in Tabs B -- or Lines B and C or 09:50:12	21 your report, right? 09:52:09
22 looking at the footnotes in the report that refer to 09:50:14	22 A Well, I -- 09:52:11
23 a volume tab reference with a "B" or a "C" in it. 09:50:17	23 MR. EISEMAN: Object as to the form. 09:52:12
24 Q So all documents in Tabs B and C are new 09:50:22	24 A -- I think in my first report I did 09:52:13
25 documents that you considered for your Reply Report? 09:50:25	25 actually say that if -- if I had that information, I 09:52:15
Page 19	Page 21

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1 would look at it, and it may or may not affect my	09:52:17	1 that modeling effort.	09:54:23
2 opinion. I -- I don't know whether it would be.	09:52:22	2 But based on the way the model was	09:54:25
3 Q (BY MR. BERRY) Sir, have you asked for a	09:52:23	3 constructed, I didn't believe it would be a good	09:54:27
4 copy of the Stroz report?	09:52:25	4 basis for me to adjust to understand what a -- a	09:54:30
5 A No.	09:52:27	5 one- to-two-year early entry by your client would do	09:54:33
6 Q And, sir, a couple of Excel files were	09:52:33	6 to Waymo's projected financial performance.	09:54:38
7 produced yesterday. Did you receive a copy of them?	09:52:38	7 Q So, sir, you looked into doing a lost	09:54:43
8 A Could you restate your question?	09:52:41	8 profits model for -- on behalf of Waymo, but	09:54:46
9 Q A couple of Excel files were produced	09:52:42	9 concluded that it was not possible?	09:54:48
10 yesterday. Have you received a copy of them?	09:52:45	10 A Well, with the information that I had, I	09:54:49
11 A Oh, from -- by -- produced by you? No, I	09:52:47	11 wasn't comfortable in doing it.	09:54:51
12 have not seen them.	09:52:48	12 Q I want to ask you some -- some general	09:54:55
13 Q Okay. Has your team -- have you received	09:52:50	13 questions about your opinions and conclusions in	09:54:58
14 them?	09:52:52	14 this case. Sir, when did you assume that Uber's	09:55:01
15 A Not to my knowledge.	09:52:53	15 LiDAR unit would be ready for commercialization?	09:55:05
16 Q Has your team received them?	09:52:53	16 A Well, who -- who -- can you -- whose --	09:55:09
17 A Not to my knowledge.	09:52:56	17 was it --	09:55:13
18 Q Are you aware of -- about them?	09:52:57	18 Q Uber's.	09:55:14
19 A No.	09:52:59	19 A Uber's. I -- I don't know when it would	09:55:15
20 Q Okay. Sir, is it fair to say that as of	09:52:59	20 be ready. I think that based on the opinions I have	09:55:19
21 today, Waymo has not lost any profits due to any	09:53:14	21 expressed, that -- they would be in 13 cities by	09:55:23
22 misappropriation of these nine trade secrets?	09:53:17	22 2022.	09:55:28
23 A Yes.	09:53:20	23 Q Sir, do you know the assumption that you	09:55:29
24 Q And is it fair to say as of today that	09:53:20	24 made -- let me ask a different question.	09:55:33
25 Uber has not realized any profits due to the alleged	09:53:22	25 According to your report and the work that	09:55:36
Page 22		Page 24	
1 misappropriation of these trade -- of these trade	09:53:27	1 you have done, when did you assume that Uber's LiDAR	09:55:38
2 secrets?	09:53:29	2 unit would be ready for commercialization?	09:55:42
3 A Yes.	09:53:29	3 A I don't have a date I assumed that it	09:55:45
4 Q And, sir, you have full access to Waymo's	09:53:31	4 would be ready based on the base case projections	09:55:47
5 financial records; is that fair?	09:53:36	5 made by Uber They didn't articulate that exact	09:55:54
6 A I think that's fair.	09:53:38	6 fact in their -- the information that I saw, so I	09:55:57
7 Q You had access to its accounting records?	09:53:39	7 can't tell you that exact date	09:55:59
8 A If I chose to look at them, yes.	09:53:42	8 Q So you don't know?	09:56:00
9 Q And you had access to their business	09:53:44	9 A I don't know	09:56:02
10 models?	09:53:46	10 Q So when did you assume that Uber's	09:56:03
11 A Yes.	09:53:47	11 software for its autonomous vehicles would be ready	09:56:05
12 Q And their forecasts?	09:53:47	12 to be commercialized?	09:56:09
13 A Yes.	09:53:49	13 A Well, again, before commercialization, it	09:56:10
14 Q And despite having full access to Waymo's	09:53:49	14 would have to be But again, since I don't have the	09:56:13
15 records, you don't have enough information to	09:53:52	15 date of the -- the actual first commercialization, I	09:56:15
16 quantify the expected future lost profits to Waymo,	09:53:55	16 don't know the answer to that question	09:56:19
17 correct?	09:53:59	17 Q Sir, what about the -- the cameras for	09:56:21
18 A That is correct.	09:54:01	18 Uber's autonomous vehicles? When did you assume	09:56:24
19 Q What are you missing?	09:54:02	19 they would be ready for commercialization?	09:56:26
20 A Well, I -- I want to understand how	09:54:03	20 A It -- the same answer as for the software	09:56:28
21 they're modeling the future and the -- the model,	09:54:05	21 That -- all of their hardware and software must be	09:56:31
22 which would be the equivalent of the Rubicon model	09:54:09	22 operational and effective before they commercialize	09:56:34
23 for your client.	09:54:12	23 the product	09:56:37
24 But -- and I talked to a -- I want to say	09:54:14	24 Q So you don't have a date?	09:56:38
25 her name is Jennifer Haroon, who was kind of head of	09:54:17	25 A I don't have a date	09:56:40
Page 23		Page 25	

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1 Q When did you assume that Uber would first 09:56:41	1 A I -- again, I assume they would be, but I 09:59:02
2 launch an autonomous vehicle? 09:56:44	2 don't know that. And -- and I can be corrected if 09:59:04
3 A I -- I don't have that fact memorized. 09:56:46	3 you show me more detail of the plans that your 09:59:08
4 And I don't believe, based on the information 09:56:48	4 client had that I'm relying upon. 09:59:11
5 that -- that I saw, I know the exact first city or 09:56:51	5 Q And, sir, it was not relevant to your 09:59:14
6 date that they were going to commercialize. 09:56:54	6 opinions whether or not Uber was going to be 09:59:16
7 Q Let me make it easier. In what year did 09:56:59	7 launching in 2018? 09:59:18
8 you assume that Uber would first commercialize an 09:57:02	8 A I think that's relevant to my conclusions, 09:59:20
9 autonomous vehicle? 09:57:04	9 yes. 09:59:21
10 A Well, I -- I assume that -- the only thing 09:57:08	10 Q But you just don't know one way or the 09:59:22
11 I assumed, I should say, is that by 2022, there 09:57:09	11 other whether they actually plan to do so? 09:59:26
12 would be 13 cities. 09:57:12	12 A Right. And it's not necessary. Because 09:59:27
13 I don't know if they entered all those 09:57:14	13 I'm not doing a -- a city-by-city vehicle usage, all 09:59:29
14 13 cities in 2022 or there was a rollout before 09:57:16	14 of those assumptions. 09:59:33
15 that, say, starting in 2020 and -- and '21. I don't 09:57:20	15 I'm using the assumptions that your client 09:59:35
16 know that. 09:57:24	16 used, not in connection with this litigation, for -- 09:59:37
17 Q Was that relevant to your analysis? 09:57:26	17 for their both operational decisions and strategic 09:59:39
18 A No. Because I was basing my numbers on 09:57:27	18 decisions to enter this market. 09:59:42
19 what your client was forecasting as their base case. 09:57:29	19 And it's not necessary for me to know that 09:59:44
20 Q Did you ask anybody what their rollout 09:57:35	20 that level of detail because it's your client's 09:59:46
21 would be for launching the autonomous vehicles? 09:57:37	21 estimates, their belief at the time that's relevant 09:59:50
22 A I don't remember asking anyone that 09:57:40	22 to me. 09:59:54
23 question. 09:57:42	23 Q Sir, did you look to see whether the 09:59:55
24 Q Did you re -- review any documents that 09:57:43	24 information you have relied upon assumed that Uber 09:59:58
25 had a proposed launch schedule for Uber's autonomous 09:57:43	25 would be launching in 2019? 10:00:01
Page 26	Page 28
1 vehicles? 09:57:47	1 A Well, since they're going to be buying 10:00:05
2 A You know, I think in some of the Rubicon 09:57:48	2 15,000 cars, I -- I believe they would be launched. 10:00:07
3 models that I have looked at, it's -- it's possible 09:57:50	3 But -- but I don't know that, and I don't know 10:00:10
4 that information is in there. But that wasn't a 09:57:52	4 where -- 10:00:11
5 necessary input to me to do my work, so I didn't 09:57:54	5 Q And -- 10:00:11
6 focus on it. 09:57:58	6 A -- even though I have some recollection 10:00:11
7 Q So the date on which Uber would be 09:58:00	7 that they're going to be starting in the Phoenix 10:00:13
8 launching autonomous vehicles is not a necessary 09:58:03	8 area, but I -- I'm -- I'm not certain of that. 10:00:16
9 input for your model? 09:58:04	9 Q And in the work that you did for your 10:00:18
10 A No. Because your client for business 09:58:06	10 opinions in this case, when you mentioned Uber 10:00:20
11 purposes modeled all of that for me. 09:58:07	11 launching, are you assuming launching with or 10:00:24
12 Q Sir, how many autonomous vehicles did you 09:58:15	12 without a safety driver? 10:00:25
13 assume that Uber would launch by the year 2017? 09:58:18	13 A Again, the assumption I have is whatever 10:00:29
14 A 2017? I don't know. I -- I think that -- 09:58:22	14 your client was planning on doing. I would assume 10:00:32
15 the only recollection I have, a number between 2017 09:58:28	15 that they would initially launch with a safety 10:00:34
16 and 2022, was that Uber was going to purchase around 09:58:33	16 driver. 10:00:38
17 15,000 vehicles in 2019. 09:58:36	17 Q At what point would they convert over to 10:00:39
18 Q How many autonomous vehicles did you 09:58:40	18 no safety driver? 10:00:42
19 assume that Uber would launch in 2018? 09:58:42	19 A When they believed that they would have a 10:00:44
20 A Again, I -- I don't know that. It's -- 09:58:45	20 vehicle that was safe enough that a safety driver 10:00:46
21 it's the same number that your client was 09:58:47	21 was no longer needed. 10:00:49
22 forecasting in their base case. 09:58:49	22 Q And what year would that be, sir? 10:00:50
23 Q For Uber operating in 2018, did you assume 09:58:52	23 A Again, I don't -- I didn't memorize that 10:00:53
24 that Uber would have -- be operating an autonomous 09:58:57	24 fact. I don't know. 10:00:55
25 vehicle? 09:59:01	25 Q And the presence of a safety driver in an 10:00:56
Page 27	Page 29

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1 autonomous vehicle is very important for the 10:00:58
 2 financial projections of profits -- 10:01:00
 3 MR EISEMAN: Object -- 10:01:04
 4 Q (BY MR. BERRY) -- for Uber, right? 10:01:04
 5 MR EISEMAN: -- objection as to form 10:01:05
 6 A I -- I agree that's an important input, 10:01:06
 7 because drivers is the most significant cost in 10:01:08
 8 Uber's service 10:01:13
 9 Q (BY MR. BERRY) And, sir, you can't say 10:01:14
 10 sitting here right now at what point you assumed 10:01:15
 11 Uber would start not using safety drivers? 10:01:19
 12 A Well, again, the only thing -- again, the 10:01:22
 13 assumption I made is that -- that all of the 10:01:24
 14 assumptions that your client made are reasonable, 10:01:27
 15 conservative, and was the best judgment of your 10:01:33
 16 client at the time they made the projections 10:01:37
 17 So you keep saying it's my assumption 10:01:42
 18 I'm just assuming that your client, who knows this 10:01:44
 19 industry far better than I would -- and this would 10:01:47
 20 be a very different conversation if I was making up 10:01:50
 21 assumptions -- that -- that this is the best 10:01:54
 22 evidence that I have 10:01:56
 23 Q Sir, how many trips did you assume that 10:01:57
 24 Uber would make with an autonomous vehicle in 2017? 10:02:00
 25 A Again, it's the -- I assumed that the 10:02:03

Page 30

1 number that's in the model -- the Rubicon model is 10:02:06
 2 the number that would have occurred. That detail 10:02:08
 3 hasn't been provided to me. 10:02:12
 4 Q Sir, did you assume there would be any 10:02:13
 5 trips made in 2017 with an autonomous vehicle? 10:02:16
 6 A I -- I didn't make any such assumption. 10:02:19
 7 But if you communicate to me and show me that your 10:02:21
 8 client did have that in the base plan I'm using, 10:02:25
 9 then the answer is yes. If they're not, the answer 10:02:29
 10 is no. 10:02:31
 11 Q And it -- that level of detail was not 10:02:32
 12 relevant to what you did to arrive at your opinions 10:02:34
 13 in this case; is that fair? 10:02:37
 14 A Yeah. I would be wasting my client's 10:02:38
 15 money if I went to that level of detail in the 10:02:41
 16 model. 10:02:44
 17 Q Sir, who did you assume Uber's competitors 10:02:45
 18 would be in 2018 with an autonomous vehicle? 10:02:47
 19 A Google. 10:02:52
 20 Q Who else? 10:02:52
 21 A I mean -- I think -- I think the only one 10:02:53
 22 that would probably have operations at that time 10:02:55
 23 would be Waymo, slash, Google. 10:02:57
 24 Q When did you assume that Waymo would 10:02:59
 25 launch its autonomous vehicle? 10:03:01

Page 31

1 A I -- I think it was either the end of this 10:03:04
 2 year or the beginning of next year. 10:03:06
 3 Q Would that be with or without a safety 10:03:08
 4 driver? 10:03:11
 5 A I think it's with a safety driver. 10:03:12
 6 Q At what point did you assume that Waymo is 10:03:14
 7 going to get rid of a safety driver? 10:03:16
 8 A I didn't make any such assumption. 10:03:18
 9 Q Sir, do you know if it's legal or illegal 10:03:21
 10 in Pittsburgh to carry passengers with an autonomous 10:03:23
 11 vehicle without a safety driver? 10:03:27
 12 MR. EISEMAN: Objection as to form. 10:03:29
 13 A I -- I don't know. But -- but based on 10:03:30
 14 everything that I understand, it would -- my 10:03:32
 15 expectation as of today, it would be illegal. 10:03:34
 16 Q (BY MR. BERRY) And, sir, do you know in 10:03:36
 17 Singapore whether it would be legal or illegal to 10:03:38
 18 carry passengers in an autonomous vehicle without a 10:03:42
 19 safety driver? 10:03:45
 20 A I -- 10:03:45
 21 MR. EISEMAN: Objection as to form. 10:03:46
 22 A -- I don't. 10:03:47
 23 Q (BY MR. BERRY) Did -- 10:03:48
 24 A Not as of today. 10:03:48
 25 Q Did you look into that question? 10:03:49

Page 32

1 A No. 10:03:51
 2 Q What did you assume Uber's cost per 10:03:53
 3 autonomous vehicle would be when it launched? 10:03:57
 4 A I don't think I have that fact memorized. 10:04:02
 5 I think I have -- I have seen some information on 10:04:04
 6 that subject, but it's whatever the cost is that was 10:04:07
 7 in this base plan. 10:04:10
 8 Q And whatever that cost was is not relevant 10:04:11
 9 to the method that you took in this? 10:04:14
 10 A Well -- 10:04:15
 11 Q -- case? 10:04:15
 12 A -- well, it's relevant to, but it's not 10:04:15
 13 necessary that I understand it or critique it or 10:04:18
 14 accept it. 10:04:22
 15 Because I -- I judge, as an expert, that 10:04:22
 16 your client, who has sophisticated financial people 10:04:25
 17 who use teams of experts to vet and come up with the 10:04:27
 18 assumptions in the model, were far more informed and 10:04:31
 19 qualified to make those assumptions than me. 10:04:35
 20 Q And, sir, when you say "teams of experts," 10:04:38
 21 what teams of experts are you referring to? 10:04:40
 22 A It -- it's the people listed on the 10:04:41
 23 project you -- you -- Rubicon documents. 10:04:43
 24 Q Who are those people? 10:04:46
 25 A I don't have those memorized. If you show 10:04:47

Page 33

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1 me documents behind Volume 5, Tab 9, I can give you 10:04:49	1 launching. But as soon as they launch, I assume 10:06:41
2 a list 10:04:54	2 they're going to charge for their service. 10:06:44
3 Q How did you assume that the cost of Uber's 10:04:54	3 THE COURT REPORTER: Wait. 10:06:45
4 autonomous vehicle would change over time? 10:04:58	4 Q (BY MR. BERRY) And, sir, you just don't 10:06:45
5 A It would decrease significantly 10:04:59	5 know what year it's going to be? 10:06:46
6 Q By how much? 10:05:01	6 A Yeah. Again, I would expect it's before 10:06:48
7 A Again, I don't have that fact memorized 10:05:02	7 2019. But exactly when, I don't know. 10:06:52
8 Q Sir, in what year did you assume that Uber 10:05:10	8 Q And the level of expected revenues by year 10:06:54
9 would first make a profit off its autonomous 10:05:13	9 for Uber's autonomous vehicle program was not 10:06:57
10 vehicles? 10:05:16	10 relevant to the type of analysis you did? 10:07:00
11 A Again, I -- I don't know that fact I 10:05:18	11 A Well, no. It's relevant. But it's not 10:07:02
12 don't know I have seen that detail I have only 10:05:20	12 necessary for me to know and -- and understand that 10:07:04
13 seen net present value calculations, the results of 10:05:23	13 level of detail. 10:07:06
14 those 10:05:25	14 Q Sir, did you personally try to project 10:07:14
15 I -- I do know based on my experience 10:05:27	15 Uber's profits going into the future? 10:07:18
16 that -- that they're going to lose money for a 10:05:28	16 A No. 10:07:20
17 while, and then eventually they will make money 10:05:31	17 Q Did you, sir, try to project Uber's 10:07:21
18 Q Sir, at what point are they going to turn 10:05:35	18 revenues going into the future? 10:07:23
19 it around and start making a profit? 10:05:37	19 A No. 10:07:25
20 A Again, I don't recall seeing that level of 10:05:40	20 Q Sir, in which cities did you assume that 10:07:29
21 detail 10:05:40	21 Uber would launch in 2018? 10:07:35
22 Q You just don't know? 10:05:42	22 A Again, I -- I have seen a schedule of 10:07:38
23 A I don't know 10:05:45	23 that, and I don't know the order and time of -- of 10:07:40
24 Q Can you say whether they're going to make 10:05:46	24 their entry to different geographic markets. For 10:07:45
25 a profit or expect to make a profit in 2018? 10:05:47	25 some reason I have a recollection that Phoenix was 10:07:48
Page 34	Page 36
1 A I -- I don't know that. But based on 10:05:49	1 one of the first. I mean, I know that Singapore is 10:07:50
2 everything that I understand, it would be -- I would 10:05:51	2 on that list, and that's why you asked the question. 10:07:55
3 be very surprised if they would. 10:05:52	3 And there were, you know, a dozen other 10:07:58
4 Q And, sir, have you arrived at any 10:05:54	4 cities, but -- but I -- I -- I don't remember the 10:08:00
5 conclusion on whether or not Uber is expected to 10:05:56	5 order and when they were going to start. 10:08:03
6 make a profit in 2019 -- 10:05:58	6 Q In -- for that list of cities that Uber is 10:08:06
7 A No. 10:06:01	7 going to launch in, as of today, in how many cities 10:08:10
8 Q -- on -- on its autonomous vehicle? 10:06:01	8 is it legal to transport people in an autonomous 10:08:15
9 A No. 10:06:02	9 vehicle without a safety driver? 10:08:19
10 Q Sir, can you tell me what profits Uber is 10:06:06	10 MR. EISEMAN: Objection as to form. 10:08:21
11 expected to have from its autonomous vehicle program 10:06:12	11 A I -- I don't know the answer to the 10:08:22
12 in 2020? 10:06:15	12 question, but it would be my expectation that none. 10:08:24
13 A No. By -- year by year, I cannot tell 10:06:17	13 Q (BY MR. BERRY) For the work that you did 10:08:30
14 you. 10:06:20	14 in this case, sir, did you assume that Uber, through 10:08:32
15 Q And, sir, that was not relevant to the 10:06:20	15 2021, is going to have limitations on the types of 10:08:36
16 analysis you did? 10:06:22	16 roads that it can transport people -- transport 10:08:40
17 A No. It's totally relevant to -- to what 10:06:23	17 people on using its autonomous vehicle? 10:08:42
18 I'm doing, as I have explained to you a number of 10:06:26	18 A I -- I -- I think -- again, I haven't 10:08:45
19 times. 10:06:28	19 studied this, but I believe that your client did 10:08:48
20 Q So, sir, we have been talking about 10:06:28	20 model that. That -- depending on, you know, when 10:08:50
21 profits. Let's talk about revenues. When did you 10:06:30	21 they had long-range LiDAR capable of driving at 10:08:55
22 assume that Uber would get its first dollar in 10:06:32	22 greater speeds, until they had that, they would be 10:08:58
23 revenue from its autonomous vehicle program? 10:06:35	23 at launch -- on streets where they're less than 10:09:01
24 A Again, it -- to be consistent with 10:06:37	24 50 miles an hour. 10:09:05
25 previous answers, I don't know when they're 10:06:39	25 Q And, sir, did you look at that modeling? 10:09:05
Page 35	Page 37

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1 A I mean, I looked at some -- I didn't look 10:09:08	1 I would -- again, based on what I know, I would guess 10:11:05
2 at the modeling. I looked at some of the 10:09:08	2 the third might be Tesla 10:11:09
3 assumptions that they were making. 10:09:11	3 Q That's just a guess? 10:11:12
4 Q And were those assumptions reasonable? 10:09:13	4 A Well, I know that they have autonomous 10:11:14
5 A Again, based on my reviewing them, they -- 10:09:14	5 vehicle capabilities I understand that they are 10:11:16
6 they looked reasonable to me, but I'm not an expert 10:09:16	6 not to the Level 4, Level 5 capability And they 10:11:19
7 in this industry. 10:09:20	7 don't even use LiDAR But I do understand they have 10:11:25
8 Q Did you ask for Waymo to -- to retain an 10:09:21	8 some plans on possibly entering this business 10:11:28
9 expert in the industry? 10:09:23	9 Q So, sir, LiDAR is not essential for an 10:11:32
10 A No. 10:09:25	10 autonomous vehicle? 10:11:34
11 Q You didn't think that one was needed? 10:09:26	11 MR EISEMAN: Objection as to form 10:11:35
12 A Not for what I was doing. 10:09:29	12 A I think it is to do Level 4 or 5, but not 10:11:36
13 Q Sir, you were talking about possible speed 10:09:32	13 Level 3 And -- and that's been told to me by 10:11:40
14 limitations on Uber's autonomous vehicle, right? 10:09:35	14 technical experts That's not my professional 10:11:46
15 A Yes. 10:09:38	15 opinion 10:11:47
16 Q What about daytime versus nighttime? Any 10:09:38	16 THE COURT REPORTER: Told to me by? 10:11:47
17 limitations there? 10:09:43	17 A By technical experts That is not my 10:11:47
18 A Yes. It -- there's weather related, and 10:09:44	18 professional opinion 10:11:49
19 there's day and nighttime as well that I have seen. 10:09:46	19 Q (BY MR BERRY) So for competitors, sir, 10:11:50
20 Q What's the weather-related limitations? 10:09:49	20 you have mentioned Waymo and Tesla Did you assume 10:11:52
21 A I -- I think -- well, it's precipitation. 10:09:50	21 that any other competitor would join the autonomous 10:11:56
22 And -- and I think that snow is a lot harder than 10:09:50	22 vehicle market by 2022? 10:11:58
23 rain. 10:09:54	23 A No Again, I know that Ford is expressing 10:12:00
24 Q And one of the cities that you assumed 10:09:56	24 some interest in this area, but I have no idea when 10:12:03
25 Uber would launch in by 2022 is Chicago, right? 10:10:00	25 their planned entry is 10:12:07
Page 38	Page 40
1 A I believe that's correct 10:10:04	1 Q The entry of competitors into the 10:12:09
2 Q And how is the weather in Chicago in the 10:10:04	2 autonomous vehicle market is relevant to forecasting 10:12:11
3 wintertime going to affect Uber's profits using 10:10:08	3 future profits for Uber, correct? 10:12:17
4 autonomous vehicles? 10:10:09	4 A If they are going to enter the 10:12:19
5 MR EISEMAN: Objection as to form 10:10:12	5 transportation-as-a-service segment, yes. 10:12:22
6 A Well, with global warming and my 10:10:13	6 Q When did you assume that autonomous 10:12:26
7 conversations with people, the winters are 10:10:14	7 vehicles would be available for consumers to 10:12:29
8 getting -- getting a lot milder But no It can be 10:10:16	8 purchase? 10:12:32
9 brutally cold and snowy in Chicago in the winter 10:10:17	9 A I haven't made such an assumption, but I 10:12:33
10 Q You just know one -- 10:10:22	10 -- I would like you to tell me that, because I'm 10:12:35
11 THE COURT REPORTER: Wait 10:10:25	11 probably going to be one of the first buyers, as 10:12:37
12 A You have got to slow down 10:10:25	12 Mr. Schuman knows. 10:12:40
13 THE COURT REPORTER: Thank you 10:10:25	13 Q Did you assume that it would be before or 10:12:43
14 Q (BY MR BERRY) You just don't know one way 10:10:25	14 after 2022? 10:12:44
15 or the other, right? 10:10:27	15 A I think it'll be around then, but I don't 10:12:47
16 A I don't 10:10:29	16 -- I haven't made any assumption one way or the 10:12:49
17 Q And did you -- let me ask a different 10:10:29	17 other. 10:12:52
18 question 10:10:37	18 Q The -- when consumers can purchase an 10:12:53
19 So you mentioned one potential competitor 10:10:43	19 autonomous vehicle, that would impact Uber's 10:12:58
20 to Uber is Waymo What about others? By 2022, did 10:10:45	20 profits, correct? 10:13:01
21 you assume that other competitors would be in the 10:10:50	21 MR. EISEMAN: Objection as to form. 10:13:02
22 autonomous vehicle market? 10:10:53	22 A I -- I think at the margin it would, but I 10:13:04
23 A I -- I didn't I -- I'm not aware of 10:10:55	23 don't think it would be a significant impact. 10:13:08
24 seeing documents that tell me who either my client 10:10:59	24 Q (BY MR. BERRY) And that's not something 10:13:10
25 or your client thought would be there I -- I 10:11:02	25 you have looked at, right? 10:13:11
Page 39	Page 41

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1 A Pardon me? 10:13:13	1 trade secret until someone could independently 10:14:56
2 Q That's not something that you looked at in 10:13:14	2 design around it I did make that assumption 10:14:58
3 this case? 10:13:15	3 Q And, sir, do you know whether today 10:15:01
4 A No 10:13:15	4 somebody had already independently developed around 10:15:01
5 Q What about accidents with autonomous 10:13:17	5 these trade secrets? 10:15:01
6 vehicles? How many accidents did you assume would 10:13:20	6 A I don't -- 10:15:04
7 happen in 2018, that resulted in death? 10:13:23	7 MR EISEMAN: Objection as to form 10:15:05
8 A I didn't make any such assumption I 10:13:26	8 A -- know -- I don't know that 10:15:05
9 don't know 10:13:28	9 Q (BY MR. BERRY) Is that something that 10:15:06
10 Q Is that -- 10:13:29	10 would be relevant to your opinions? 10:15:07
11 A I understand they're going to re -- 10:13:30	11 A Yes 10:15:09
12 significantly reduce accidents overall But how 10:13:31	12 Q And why is it? 10:15:09
13 many will be caused by the autonomous vehicle and 10:13:34	13 A Well, if it was either shorter or longer 10:15:11
14 its logic, I don't know 10:13:39	14 than the numbers I have used, I would want to adjust 10:15:14
15 Q And accidents caused by autonomous 10:13:41	15 my damages accordingly 10:15:17
16 vehicles will have an impact on future regulatory 10:13:42	16 Q And if it were shorter, you would have to 10:15:19
17 constraints, fair? 10:13:47	17 reduce your damages, right? 10:15:21
18 A I think that's -- 10:13:48	18 A Well, it's an incomplete hypothetical If 10:15:23
19 MR EISEMAN: Objection as to form 10:13:49	19 they reduced it and they still used as a basis the 10:15:26
20 A -- depending on the number and severity, I 10:13:49	20 trade secret, I don't think it has any relevance to 10:15:28
21 think that's possible 10:13:52	21 what I'm doing 10:15:30
22 Q (BY MR. BERRY) But that's not something 10:13:56	22 But if it really was someone who knew 10:15:31
23 that you looked at in this case? 10:13:57	23 nothing about the trade secrets and started from 10:15:33
24 A No I -- I -- I haven't seen any 10:13:58	24 scratch and -- and did design around it, that would 10:15:35
25 information on that subject that's produced in this 10:14:00	25 be very relevant to me 10:15:38
Page 42	Page 44
1 case. 10:14:02	1 Q Sir, your damages opinions in this case 10:15:52
2 Q Sir, did you look at or make any 10:14:07	2 assume that the court will not enter a permanent 10:15:55
3 assumptions about how long each trade secret will 10:14:09	3 injunction, correct? 10:15:58
4 remain a trade secret? 10:14:12	4 A Yes. 10:16:00
5 A I didn't make such an assumption. I mean, 10:14:14	5 Q And you didn't do any work to figure out 10:16:01
6 I am relying upon either your client or the 10:14:16	6 what would happen or what would happen to your 10:16:04
7 technical expert retained by Waymo. I'm not making 10:14:19	7 damages opinions if the court were to enter a 10:16:06
8 that judgment call. 10:14:24	8 permanent injunction? 10:16:10
9 Q Let's take Trade Secret 9, for example. 10:14:25	9 A That's accurate. 10:16:11
10 How long did you assume for your analysis that would 10:14:27	10 Q And, sir, your damages opinions in this 10:16:12
11 remain a trade secret? That's the FAC lens. 10:14:29	11 case assume that Uber is using the nine trade 10:16:19
12 A I know which one it is. 10:14:35	12 secrets, right? 10:16:24
13 Q Okay. 10:14:37	13 A Well, they're either using it currently or 10:16:26
14 A I don't remember time. Is it .34 years? 10:14:37	14 they are going to use between now and entry to the 10:16:29
15 I -- I don't remember -- we can look at one of my 10:14:39	15 marketplace. 10:16:33
16 tables, and I can tell you. I don't have that fact 10:14:42	16 Q And if Uber, in fact, does not use at any 10:16:33
17 memorized. 10:14:45	17 time one or more of the nine trade secrets, that's 10:16:36
18 Q The time that you're referring to is the 10:14:45	18 relevant to your damages opinion, right? 10:16:38
19 time to indep -- independently develop a round, 10:14:46	19 A I do think that's relevant. 10:16:41
20 right? 10:14:49	20 Q And for example, if Uber doesn't use one 10:16:43
21 A Correct. 10:14:50	21 of the nine trade secrets and never did, there would 10:16:46
22 Q I'm asking you a different question. For 10:14:50	22 be no unjust enrichment from that, correct? 10:16:48
23 how long did you assume that would remain a trade 10:14:51	23 A I agree with you. 10:16:52
24 secret? 10:14:54	24 Q I'm going to move on to your first 10:16:57
25 A Well, I assume it would remain a train -- 10:14:54	25 opinion. Do you need a break before we do that? 10:16:59
Page 43	Page 45

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1	A	Does the court reporter need a break?	10:17:05
2		THE COURT REPORTER: Just slow down,	10:17:05
3		please.	10:17:05
4	A	No. If we both slow down, I don't need a	10:17:05
5		break.	10:17:08
6	Q	(BY MR. BERRY) So let's talk, sir, about	10:17:08
7		you can accelerated development opinion. My	10:17:10
8		understanding is that they are two variables. One	10:17:13
9		is the value of any accelerated development and the	10:17:16
10		second is the length of acceleration; is that fair?	10:17:20
11	A	That is fair.	10:17:24
12	Q	For the first variable, the value of	10:17:26
13		accelerated development, sir, you obtained that	10:17:29
14		number from a presentation that Ms. Qi prepared?	10:17:31
15	A	Ms. Qi, yes.	10:17:35
16	Q	Qi?	10:17:36
17	A	I think it's pronounced Qi.	10:17:36
18	Q	And, sir, you did not independently	10:17:45
19		calculate the value of accelerated development to	10:17:47
20		Uber, right?	10:17:50
21	A	Correct.	10:17:51
22	Q	You relied on Ms. Qi?	10:17:51
23	A	I did.	10:17:54
24	Q	And for the length of acceleration, you	10:17:56
25		also relied on other people to give you that number?	10:17:59
Page 46			
1	A	Correct. I have no independent opinion on	10:18:03
2		any of those numbers.	10:18:05
3	Q	For Trade Secret 25 and 111, you relied on	10:18:07
4		Waymo's technical expert, Dr. Hesselink?	10:18:12
5	A	Hesselink, yes.	10:18:15
6	Q	And for all the other trade secrets, you	10:18:16
7		relied on Uber, right?	10:18:19
8	A	Interrogatory answer.	10:18:22
9	Q	So to arrive at your unjust accelerated	10:18:22
10		profits opinion, you take the value of acceleration	10:18:27
11		from Ms. Qi, multiply that by the length of	10:18:31
12		acceleration, and that's how you get your number --	10:18:35
13		MR. EISEMAN: Objection as to form.	10:18:37
14	Q	(BY MR. BERRY) -- fair?	10:18:38
15	A	Basically, yes.	10:18:39
16	Q	Sir, how many hours did you personally	10:18:42
17		spend on your accelerated development opinion?	10:18:44
18	A	I -- I have no way to estimate that. I	10:18:48
19		mean, I would say it was a couple of hours.	10:18:50
20		I mean, what I do in any case is I look	10:18:54
21		for the best yardsticks to determine what I have to	10:18:58
22		measure. And then once I do that and that's been	10:19:02
23		assembled and presented to me, I make a judgment.	10:19:07
24		That doesn't take a lot of time.	10:19:09
25		But going through and considering the	10:19:12
Page 47			
1		different alternatives may take a fair amount of	10:19:14
2		time.	10:19:17
3		But once -- once I understood what Ms. Qi	10:19:17
4		did and all the options or calculations that I could	10:19:21
5		rely upon, I then made a judgment as to which of	10:19:26
6		those to rely upon. And I would say that was no	10:19:29
7		more than a couple hours.	10:19:33
8	Q	Sir, in your Opening Expert Report you	10:19:35
9		state with respect to unjust enrichment, it's the	10:19:38
10		Defendants' burden to prove any deductible expenses	10:19:41
11		and/or apportionment that you applicable?	10:19:44
12	A	Yeah, not giving you a legal opinion. But	10:19:47
13		as -- as a damage expert, that's my experience in	10:19:49
14		other cases.	10:19:51
15	Q	So I -- my question to you, sir, is: On	10:19:52
16		what do you base that?	10:19:55
17	A	On, I think, statute (sic) and case law.	10:19:57
18	Q	What statute?	10:20:02
19	A	I -- I don't remember. Like I say, I'm	10:20:04
20		not giving you a legal expert -- a legal opinion.	10:20:04
21	Q	So I asked you about statutes, but what	10:20:12
22		case law do you base that on?	10:20:14
23	A	Again, I have seen cases that have held	10:20:17
24		that, but I can't -- I'm not cite -- I didn't cite	10:20:19
25		cases in my report.	10:20:22
Page 48			
1	Q	Sir, you have seen a trade secret case	10:20:24
2		holding that it's the Defendants' burden to	10:20:26
3		apportion any damages?	10:20:27
4	A	No. No. I think that -- that once you	10:20:30
5		establish, like, revenues, then the cost portion is	10:20:33
6		what I'm talking about.	10:20:37
7		Or again, if there's only a piece of a	10:20:39
8		product that is practicing the trade secret, you	10:20:42
9		can't use the entire product -- or you may or may	10:20:45
10		not be able to use the entire product. And if you	10:20:48
11		can't, then it's the Defendants' burden to figure	10:20:52
12		out that apportionment. That's my experience.	10:20:54
13	Q	When you wrote this in your expert report	10:20:57
14		that it's the Defendants' burden for any -- to do	10:20:59
15		any apportionment, did you have something in --	10:21:02
16		particular in mind that you based that on?	10:21:04
17	A	No. It's just my general experience. And	10:21:07
18		unlike some of your re -- expert reports, who I	10:21:10
19		believe lawyers wrote some significant sections, I	10:21:13
20		wrote that section. No lawyer wrote that. That's	10:21:16
21		just my experience.	10:21:19
22	Q	And sitting here now, you can't point to	10:21:24
23		anything in the trade secret context that says?	10:21:27
24	A	No. And -- and if I'm correct, I would	10:21:30
25		assume my lawyers have the burden on my side to cite	10:21:32
Page 49			

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1 the appropriate statute or case law to the judge 10:21:36
 2 I'm not going to do it 10:21:40
 3 Q Sir, in your Opening Report you pointed 10:21:42
 4 out that you did not have a copy of Uber's Rubicon 10:21:47
 5 model that matches to the version that Ms Qi used, 10:21:48
 6 right? 10:21:54
 7 A That is correct 10:21:55
 8 Q And you knew that when you wrote your 10:21:55
 9 report that you didn't have it, right? 10:21:57
 10 A I knew that, yes 10:21:59
 11 Q And you didn't need the Rubicon model to 10:22:00
 12 write your Opening Report, right? 10:22:03
 13 A No I -- again, I -- I -- if I wanted to 10:22:04
 14 change assumptions and say Mike Wagner knows more 10:22:06
 15 than Uber, I would need it 10:22:10
 16 I -- I didn't think even if I had the 10:22:13
 17 model, that I would be making those judgments that I 10:22:15
 18 know more than they know But if I had it, I could 10:22:19
 19 better understand the logic they use to come to 10:22:22
 20 their numbers 10:22:25
 21 Q Let's put it this way: You were 10:22:26
 22 confident in the opinions in this case in your 10:22:29
 23 Opening Report despite not having the Rubicon model? 10:22:31
 24 A I was 10:22:34
 25 Q And, sir, did you believe that you were 10:22:35

Page 50

1 acting reasonably when you arrived at the opinions 10:22:47
 2 in this case, even though you didn't have the 10:22:50
 3 Rubicon model? 10:22:53
 4 A Absolutely It doesn't get better than 10:22:54
 5 this I mean, we would -- you would have had a 10:22:57
 6 different Daubert motion if Mike Wagner came up with 10:22:59
 7 a model and made a whole bunch of assumptions about 10:23:05
 8 market entry and prices and competition 10:23:06
 9 You would be all over me No I always 10:23:08
 10 try to seek models from the parties that aren't 10:23:11
 11 prepared in anticipation of the litigation That's 10:23:17
 12 the Rosetta Stone of my work And I had it here 10:23:19
 13 So no, I am absolutely comfortable with what I did 10:23:24
 14 Q Sir, who found the Qi document for you? 10:23:29
 15 A I -- I don't know I can tell you Greg 10:23:32
 16 Pinsonneault brought it to my attention I don't 10:23:33
 17 know if he found it or some other staff member found 10:23:35
 18 it 10:23:38
 19 Q And, sir, you had access in this case to 10:23:46
 20 Uber's underlying financial and accounting 10:23:49
 21 documents, right? 10:23:52
 22 A I just think to some extent I did I 10:23:53
 23 don't remember seeing a lot Like, for example, I 10:23:55
 24 don't remember seeing an Uber financial statement 10:23:57
 25 produced in the case 10:24:01

Page 51

1 Q And to the extent one was -- one was 10:24:01
 2 produced, you sure didn't look at it, right? 10:24:03
 3 A Well, Mike Wagner didn't. And if it's on 10:24:06
 4 the "Documents Considered List," then my staff 10:24:08
 5 didn't -- didn't bring it to my attention. 10:24:11
 6 Q But an Uber profit and loss statement is 10:24:13
 7 just simply not relevant to the analysis that you 10:24:16
 8 did in this case? 10:24:16
 9 A Well, yeah. As we talked about earlier, 10:24:17
 10 this business, your client isn't in yet. So that -- 10:24:19
 11 I don't think there would be a P&L. 10:24:23
 12 Now, they may have a P&L for the ATG 10:24:26
 13 group, but that's just going to show expenses to 10:24:30
 14 date. 10:24:34
 15 Q Now, you did, in fact, rely on some 10:24:40
 16 Rubicon PowerPoints produced by Uber in this case, 10:24:43
 17 right? 10:24:46
 18 A I did. 10:24:47
 19 Q Let me show you one that you -- or I 10:24:47
 20 believe you relied upon. 10:24:50
 21 (Exhibit 2273 was marked for 10:24:55
 22 identification and is attached to the transcript.) 10:24:55
 23 A Thank you. 10:25:31
 24 Q (BY MR. BERRY) Sir, I have handed you 10:25:35
 25 what's been marked as Exhibit 2273. And it's a copy 10:25:36

Page 52

1 of a May 20, 2016 "Project Rubicon PowerPoint" 10:25:39
 2 Do you see that? 10:25:45
 3 A I do 10:25:46
 4 Q And, sir, this is one of the documents 10:25:46
 5 that you relied upon in your report, right? 10:25:47
 6 A It is I think it's behind Tab 9 of 10:25:51
 7 Volume 5 of my report 10:25:53
 8 Q So one of the ones that you not only 10:25:58
 9 considered, but actually relied upon, right? 10:26:01
 10 A Yes 10:26:04
 11 THE COURT REPORTER: Wait Slow down, 10:26:04
 12 please Repeat 10:26:04
 13 Q (BY MR. BERRY) So, sir, it's one that you 10:26:04
 14 not only considered, but you actually relied upon? 10:26:04
 15 A Yes 10:26:04
 16 Q Would you please turn to page 2 It's the 10:26:07
 17 "Executive Summary " And it's the page ending in 10:26:11
 18 551 10:26:14
 19 A Yes 10:26:15
 20 Q And do you see at the top -- and -- it 10:26:17
 21 says "Goal for Today's Meeting"? 10:26:19
 22 A Yes 10:26:21
 23 Q It says, Reach consensus on appropriate 10:26:22
 24 number of AVs to order in 2019 and previewed in 10:26:25
 25 2020 10:26:30

Page 53

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1 Do you see that? 10:26:32	1 they make decisions in the hundreds of millions of 10:28:14
2 A I do. 10:26:32	2 dollars based on their judgments with this 10:28:19
3 Q Sir, is it your understanding that the 10:26:33	3 information. 10:28:22
4 Rubicon model was designed to forecast the number of 10:26:35	4 Q (BY MR. BERRY) Sir, you think that this 10:28:23
5 vehicles purchased? 10:26:40	5 warning on the top right page is appropriate and 10:28:26
6 A Yes. 10:26:41	6 fair, right? 10:28:28
7 Q And that was the purpose of it, right? 10:26:41	7 A I do. 10:28:29
8 A Well, it's -- it's -- it's -- one of the 10:26:43	8 Q Let's -- please turn to page ending in 10:28:30
9 major purpose -- purposes certainly is -- as 10:26:45	9 561. And, sir, do you see at the top it says 10:28:33
10 reflected in this Executive Summary, is they're 10:26:49	10 "Recommendation, Next Steps"? 10:28:43
11 using that modeling to make this decision, which is 10:26:51	11 A Yes. 10:28:44
12 an operational decision. 10:26:54	12 Q And then under "Next Steps," the third 10:28:45
13 Q And, sir, in the top right of this page 10:26:56	13 bullet point says, Continually refresh analysis on a 10:28:47
14 there's a -- text and an orange box. Do you see 10:26:59	14 quarterly basis. 10:28:51
15 that? 10:27:02	15 Do you see that? 10:28:52
16 A Well, I see it, but I can't read it. 10:27:02	16 A I do. 10:28:52
17 Q Here. It says, Note -- you really can't 10:27:05	17 Q And did you look at the refresh analysis 10:28:52
18 read that, sir? 10:27:08	18 on a quarterly basis? 10:28:57
19 A I -- my eyes -- eyes are not good -- 10:27:09	19 A No. Because you didn't produce them. I 10:28:58
20 Q Okay. 10:27:10	20 think I have looked at at least two subsequent to 10:29:01
21 A -- but -- I mean, I -- I know what it 10:27:10	21 this. 10:29:05
22 said -- I know what it says. I can't read it here 10:27:13	22 And the only thing that has happened is 10:29:05
23 though. 10:27:15	23 that your client has become more aggressive in their 10:29:06
24 Q Sir, it says, Results are highly 10:27:16	24 assumptions. They're going to enter more cities 10:29:10
25 speculative and depend on significant assumptions on 10:27:17	25 earlier than they were as of this time. 10:29:12
Page 54	Page 56
1 cost curves and pace of technology development. 10:27:20	1 Q What was the date of the last Rubicon 10:29:15
2 Output of this analysis require commentary and 10:27:22	2 PowerPoint that you saw? 10:29:16
3 context. 10:27:26	3 A I'm saying it was in June, so it would be 10:29:19
4 Do you see that? 10:27:26	4 the next quarter 10:29:21
5 A I do. 10:27:27	5 Q Of 2016? 10:29:23
6 Q And is that your opinion as well, sir, 10:27:27	6 A Yes 10:29:24
7 that results are highly speculative and depend on 10:27:29	7 THE COURT REPORTER: Wait 10:29:25
8 significant assumptions? 10:27:34	8 Q (BY MR. BERRY) When did Uber stop using 10:29:25
9 A Well, I don't know if I would use the 10:27:35	9 its Rubicon model? 10:29:29
10 word "speculative." But I would say that the 10:27:36	10 A I -- I -- I don't know that But I know 10:29:31
11 results were -- are uncertain, because this deal is 10:27:38	11 it was sometime between June of 2016 and today, but 10:29:32
12 a market that no one has entered yet. 10:27:41	12 I don't know that date 10:29:37
13 And you know, I have done a number of 10:27:43	13 Q Why did Uber stop using the project 10:29:37
14 cases like this. And in any of those, there's 10:27:46	14 Rubicon model? 10:29:40
15 uncertainties, and that has to be taken into 10:27:48	15 A I have no information on that subject I 10:29:41
16 consideration. 10:27:51	16 don't know 10:29:43
17 Q So Uber considered its own project Rubicon 10:27:52	17 Q Is that relevant to your analysis? 10:29:44
18 model to be highly speculative, correct? 10:27:55	18 A It -- it may or may not be I -- I would 10:29:47
19 MR. EISEMAN: Objection as to form. 10:27:57	19 need facts to know 10:29:49
20 A Well, no. They think based -- based on 10:28:00	20 Q If Uber stopped using the Rubicon model 10:29:49
21 all of their work, that these are the best numbers 10:28:03	21 because it was too speculative, is that relevant to 10:29:52
22 they can come up with. 10:28:07	22 your analysis? 10:29:56
23 They -- they have this qualifying 10:28:08	23 MR. EISEMAN: Objection as to form 10:30:00
24 statement, you know, on this first page, which I 10:28:09	24 A I don't think so 10:30:02
25 think is appropriate and fair. But no, they're -- 10:28:12	25 Q (BY MR. BERRY) So if Uber internally 10:30:03
Page 55	Page 57

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1 decided the Rubicon modeling was too speculative to	10:30:05	1 A I don't know the answer to that question.	10:32:01
2 rely upon, that is not relevant to your analysis?	10:30:10	2 Q Sir, would you please turn to the page	10:32:12
3 A No. Because I'm relying upon it when they	10:30:11	3 ending in 566?	10:32:15
4 were using it to make -- as -- as an example right	10:30:14	4 A Yes.	10:32:18
5 here, they are recommending 15,000s AVs to be	10:30:17	5 Q And do you see at the top of the page that	10:32:19
6 purchased from their OEMs in 2019. That is a major	10:30:21	6 this page is called "Launch Schedule"?	10:32:21
7 business decision. And this is the best information	10:30:27	7 A Yes.	10:32:25
8 they had at the time.	10:30:29	8 Q And the table has a bear case, a base	10:32:25
9 If they then subsequently decide to do	10:30:30	9 case, and a bull case?	10:32:30
10 something else, it's not that relevant to me as of	10:30:32	10 A Yes.	10:32:32
11 this time. Now, if I was going to be looking at	10:30:35	11 Q And in this case, sir, you used the base	10:32:33
12 projections later, that might be relevant to me.	10:30:38	12 case; is that fair?	10:32:36
13 Q So let me reask my question, because I'm	10:30:41	13 A Correct.	10:32:38
14 not sure you answered it.	10:30:43	14 Q According to the launch schedule in this	10:32:40
15 A Okay.	10:30:45	15 Project Rubicon PowerPoint that you relied upon, it	10:32:43
16 Q My question, sir: Is it relevant to your	10:30:45	16 assumed that Uber would launch in two cities in	10:32:47
17 analysis in -- is it relevant to your analysis in	10:30:47	17 2016, correct?	10:32:49
18 this case if Uber stopped using the project Rubicon	10:30:49	18 A It does say it. And I kept saying	10:32:51
19 modeling because it was too speculative?	10:30:54	19 Phoenix. I should have said Tucson. Yes.	10:32:54
20 MR. EISEMAN: Objection as to form.	10:30:56	20 Q So the analysis that you relied upon, sir,	10:32:57
21 A I think I answered that and maybe put too	10:30:57	21 assumed that Uber would launch in two cities in	10:33:00
22 much in my answer that you should have moved to	10:30:59	22 2016, correct?	10:33:02
23 strike. But no, that's not relevant to me.	10:31:02	23 A Correct.	10:33:03
24 Q (BY MR. BERRY) Sir, you -- you reference	10:31:04	24 Q Uber hasn't launched in any city in 2017,	10:33:04
25 here at the top of the page ending in 561 that	10:31:05	25 has it?	10:33:07
Page 58		Page 60	
1 there's 15,000 total units projected to be purchased	10:31:10	1 A As far as I know, they have not.	10:33:09
2 for 2019, right?	10:31:13	2 Q The assumption --	10:33:09
3 A Yes.	10:31:15	3 THE COURT REPORTER: Wait.	10:33:09
4 Q And did Uber, in fact, make an order for	10:31:16	4 Q (BY MR. BERRY) -- that Uber would launch	10:33:09
5 15,000 total units for 2019?	10:31:21	5 in two cities in 2016 has now proven false?	10:33:12
6 A I -- I don't think they made any order.	10:31:23	6 A Yes.	10:33:19
7 This is only 2017. I think it's too early to place	10:31:25	7 Q Sir, do you see the base case for 2017	10:33:20
8 that order. So no, I don't think they have done it	10:31:28	8 assumes that Uber would launch in four cities by	10:33:25
9 yet.	10:31:32	9 2017, correct?	10:33:30
10 THE COURT REPORTER: Wait.	10:31:32	10 A Yes.	10:33:31
11 Q (BY MR. BERRY) In fact, Uber, as far as	10:31:32	11 MR. EISEMAN: Objection as to form.	10:33:31
12 you know, has never placed an order for any vehicles	10:31:34	12 Q (BY MR. BERRY) And, sir, we are now in	10:33:34
13 for its autonomous program?	10:31:37	13 2017, and Uber has not launched in any cities,	10:33:36
14 A Well, I think that's an incorrect	10:31:39	14 correct?	10:33:39
15 statement, because I understand they have autonomous	10:31:41	15 A As far as I know, they have not.	10:33:40
16 vehicles that are operational. So obviously, they	10:31:42	16 Q And so, sir, time has proven the	10:33:41
17 didn't make them from scratch. They bought them	10:31:45	17 assumption for four cities to be launched in 2017 as	10:33:44
18 from somebody.	10:31:48	18 false?	10:33:48
19 Q How many autonomous vehicles does Uber	10:31:49	19 A Correct.	10:33:50
20 have?	10:31:50	20 Q And, sir, do you see that this launch	10:33:51
21 A I don't know that.	10:31:51	21 schedule for 2018 assumes that Uber will launch in	10:33:54
22 Q Enough to commercialize?	10:31:52	22 six cities in -- by 2018, correct?	10:33:59
23 A No, I don't think so.	10:31:54	23 A Yes. And -- and I actually should take a	10:34:03
24 Q Has Uber placed any orders for vehicles	10:31:55	24 little bit of fault with what you have said. Maybe	10:34:05
25 that would allow it to commercialize?	10:31:59	25 you're saying it correctly.	10:34:09
Page 59		Page 61	

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1 But they're not launching in six cities in 10:34:11	1 Q And why is that, sir? 10:36:27
2 2018. They're launching in three additional cities 10:34:12	2 A Because I had calculated what I would 10:36:28
3 beyond what they have already launched in. 10:34:16	3 define as an expectancy measure of damages, what was 10:36:29
4 Q Let me ask re-ask the question and make 10:34:19	4 in your client's mind at the time they allegedly 10:36:33
5 sure it's clear. Sir, by the end of 2018, the 10:34:21	5 took the trade secrets And so what happens after 10:36:36
6 modeling that you relied upon assumed that Uber 10:34:25	6 that is -- is not that relevant to me 10:36:39
7 would launch in six cities, correct? 10:34:29	7 Q Okay So you -- I want to make sure I get 10:36:42
8 A Yes. 10:34:33	8 this right You were looking at what was in Uber's 10:36:44
9 Q And as far as you know, sir, does Uber 10:34:34	9 mind in January of 2016, correct? 10:36:47
10 have any current plans to launch in any cities next 10:34:36	10 A Correct 10:36:49
11 year? 10:34:40	11 Q And you have ignored intervening events, 10:36:50
12 A I have not seen what their plans are for 10:34:40	12 to the extent there are any, between January of 2016 10:36:53
13 next year, so I don't know. 10:34:43	13 and today? 10:36:56
14 Q If you look below, it has "Detailed Launch 10:34:47	14 MR EISEMAN: Objection as -- 10:36:57
15 Schedule." 10:34:49	15 A I -- 10:36:57
16 Do you see that? 10:34:50	16 MR EISEMAN: -- to form 10:36:57
17 A Yes. 10:34:51	17 A -- I wouldn't say I have ignored them, 10:36:58
18 Q And it identifies the names of the cities 10:34:53	18 but -- but they are not -- they're not important to 10:37:00
19 that they assume that Uber is going to launch in by 10:34:55	19 change my opinion 10:37:03
20 year, right? 10:34:59	20 Q (BY MR. BERRY) And, sir, to the extent 10:37:04
21 A It does. 10:35:00	21 that some of the assumptions underlying Ms. Qi's 10:37:06
22 Q And for 2016 base case, sir, it identifies 10:35:01	22 analysis have proven false, that does not impact 10:37:09
23 Pittsburgh and Tucson, right? 10:35:06	23 your analysis? 10:37:14
24 A It does. 10:35:08	24 MR EISEMAN: Objection as to form 10:37:15
25 Q But even though we're now in 2017, Uber 10:35:11	25 A No, it does not 10:37:17
Page 62	
1 has not launched in either city? 10:35:14	1 Q (BY MR. BERRY) Sir, if you were to conduct 10:37:18
2 A As far as I know, they have not. 10:35:16	2 an analysis today of expected profits through 2022 10:37:25
3 Q And for 2017, sir, in addition to 10:35:17	3 for Uber, they would be significantly lower than 10:37:34
4 Pittsburgh and Tucson, it also identifies "Singapore 10:35:22	4 what Ms. Qi projected in 2016, correct? 10:37:37
5 and Dallas." 10:35:24	5 MR. EISEMAN: Objection as to form. 10:37:40
6 Do you see that? 10:35:26	6 A Not necessarily. It's an incomplete 10:37:42
7 A Yes. 10:35:26	7 hypothetical. Clearly they're entering later. But 10:37:44
8 Q And Uber has not launched in Singapore or 10:35:26	8 they could accelerate their -- their launches of 10:37:47
9 Dallas, has it? 10:35:30	9 cities in the future and either catch up or maybe 10:37:50
10 A As far as I know, they have not. 10:35:31	10 even exceed if, again, they launch more than the 10:37:53
11 Q When will Uber launch in Singapore? 10:35:33	11 cities that were in the base case during the time 10:37:56
12 A I don't know what their current plans are. 10:35:36	12 horizon of the projection. 10:37:59
13 It's not been produced in the case. 10:35:38	13 Q (BY MR. BERRY) And -- 10:38:01
14 Q Sir, the fact that the assumptions -- let 10:35:51	14 A So you have given me not enough 10:38:01
15 me back up and ask a different question. 10:35:55	15 information to answer the question. 10:38:03
16 This launch schedule from this Project 10:35:57	16 Q Is that -- let me back up and ask you: Is 10:38:04
17 Rubicon PowerPoint is some of the information that 10:36:00	17 that something that you looked at in this case? Did 10:38:05
18 Ms. Qi relied upon in coming up with the value of 10:36:03	18 you look at Uber's current plans and current 10:38:08
19 accelerated development, correct? 10:36:08	19 forecasts and modeling in an attempt to try to 10:38:11
20 A It is. I don't think she relied on this 10:36:10	20 project revenues through 2022? 10:38:13
21 document, but a similar document, yes. 10:36:12	21 A No. Because I -- I asked if that 10:38:17
22 Q The fact that we are now sitting in 2017 10:36:14	22 information was available, and I was told it was not 10:38:18
23 and some of these assumptions we know are false, how 10:36:18	23 produced. So if you want to produce it and have me 10:38:21
24 did that impact your analysis? 10:36:21	24 consider it, I'm happy to do so. But it's not 10:38:23
25 A It doesn't impact it at all. 10:36:23	25 available for me to consider. 10:38:27
Page 63	
Page 64	
Page 65	

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1 Q And what information was not available? 10:38:28	1 development work assumes that Uber is going to 10:40:53
2 A Their -- their current projections and 10:38:30	2 launch in 2016, the fact that's not happened is 10:40:56
3 forecasts for both launching and profits going into 10:38:32	3 something under the Book of Wisdom that you would 10:41:00
4 the future. 10:38:35	4 look at, correct? 10:41:03
5 THE COURT REPORTER: I just need you to 10:38:42	5 MR EISEMAN: Objection as to form 10:41:04
6 both slow down, please. 10:38:43	6 A Yes 10:41:05
7 Q (BY MR. BERRY) But, sir, Uber's current 10:38:46	7 Q (BY MR. BERRY) How did that impact your 10:41:05
8 projection and forecasts was not necessary for you 10:38:48	8 reasonable royalty analysis, the fact that the 10:41:07
9 to have for the opinions that you reached in this 10:38:52	9 numbers you used assumed that Uber would launch in 10:41:10
10 case? 10:38:53	10 2016 and 2017, and that hasn't happened? 10:41:13
11 A It -- based on my statement to you earlier 10:38:54	11 MR EISEMAN: Objection as to form 10:41:17
12 that -- what I think I have done as an expectancy 10:38:57	12 A I -- I have no information to adjust for 10:41:17
13 measure of damages, it's not relevant. 10:39:00	13 that, so it has not impacted my opinion 10:41:20
14 Q Sir, what's the Book of Wisdom? 10:39:07	14 Q (BY MR. BERRY) So, sir, it's something 10:41:23
15 A Well, it's a U.S. Supreme Court decision 10:39:10	15 that you agree you should look at, but you have not 10:41:25
16 in Sinclair versus Jenkins Refinery, I think, back 10:39:14	16 made any adjustments for that? 10:41:28
17 in 1933 or something by Justice Cardozo where the 10:39:19	17 MR EISEMAN: Objection as to form 10:41:29
18 case law in the patent area makes what I 10:39:26	18 A I think that's fair 10:41:31
19 professionally think is a bad decision; that the 10:39:28	19 MR EISEMAN: Mr. Berry, when we have a 10:41:39
20 hypothetical negotiation occurs at or before the 10:39:31	20 chance to take a break, it might be good for the 10:41:41
21 date of first infringement. 10:39:34	21 court reporter 10:41:44
22 But the patent statute says that you are 10:39:37	22 MR BERRY: Okay Absolutely Let's take 10:41:44
23 to compensate the patent owner for use of the 10:39:39	23 a break 10:41:46
24 invention. By definition, there is no use of the 10:39:43	24 MR EISEMAN: All right It is 10:41 a m 10:41:46
25 invention before infringement occurs, so you have to 10:39:48	25 We are going off the record 10:41:49
Page 66	Page 68
1 look at facts that don't exist until after the date 10:39:50	1 (A break was taken from 10:41 a m to 10:41:50
2 of the hypothetical negotiation to inform your 10:39:54	2 10:57 a m) 10:41:53
3 opinion as to what should be paid. 10:39:57	3 THE VIDEOGRAPHER: We are back on the 10:57:50
4 Q So you essentially look at events that 10:39:59	4 record It's 10:57 a m 10:57:50
5 happened after the hypothetical negotiation to 10:40:02	5 Q (BY MR. BERRY) Sir, I want to continue now 10:57:52
6 inform what the parties have agreed upon for the 10:40:05	6 and talk about -- more about the value of 10:57:54
7 reasonable royalty? 10:40:10	7 accelerated development and the Ms Qi slide As -- 10:57:57
8 A Right. Because that is an outcome 10:40:11	8 as far as you know as of today, no company in the 10:58:03
9 approach to calculating damages, what has actually 10:40:13	9 world has earned a profit from using autonomous 10:58:06
10 happened. 10:40:17	10 vehicles to transport passengers, right? 10:58:10
11 Q And we're going to get it -- into it in 10:40:17	11 A Correct 10:58:14
12 more detail later, sir, but your reasonable royalty 10:40:19	12 Q In fact, no company in the world, as far 10:58:15
13 analysis relies upon your accelerated development 10:40:23	13 as you're aware today, has ever made a dollar of 10:58:16
14 model, correct? 10:40:25	14 revenue transporting passengers in an autonomous 10:58:18
15 A It does. 10:40:26	15 vehicle? 10:58:22
16 Q And did you follow the Book of Wisdom and 10:40:27	16 A Correct 10:58:22
17 look at current events to help shape what the 10:40:30	17 Q Did you make any adjustments to the Ms Qi 10:58:28
18 reasonable royalty should be in this case? 10:40:32	18 numbers before relying on them? 10:58:31
19 A I -- I -- I didn't memorize that fact. 10:40:36	19 A No 10:58:33
20 But if there were facts that were relevant and I 10:40:37	20 Q Let me show you a copy of that 10:58:34
21 have said in my report that occurred after the 10:40:40	21 presentation Sir, I have handed you what has been 10:58:35
22 hypothetical negotiation, the answer is yes. I 10:40:44	22 marked as Exhibit 299 10:58:48
23 think the answer is yes. 10:40:46	23 Do you recognize this as a copy of the 10:58:53
24 Q So the facts that we have just been 10:40:47	24 Ms Qi presentation that you relied upon? 10:58:55
25 looking at here, the fact that your accelerated 10:40:49	25 A Yes It's behind Tab 7 of Volume 5 of my 10:58:57
Page 67	Page 69

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1 report.	10:59:00	1 the analysis. It's just not her going on her	11:00:59
2 Q And this is a -- a four-slide	10:59:04	2 computer at night by herself making some guesses.	11:01:01
3 presentation -- PowerPoint presentation, right?	10:59:07	3 This was done by the people that do the Project	11:01:04
4 A It was, as produced to us.	10:59:10	4 Rubicon modeling.	11:01:07
5 Q And you read Ms. Qi's depo -- deposition	10:59:16	5 Q This slide was?	11:01:08
6 testimony in this case, right?	10:59:19	6 A I don't know if this -- no. I -- I don't	11:01:10
7 A You have assumed a fact in evidence, yes.	10:59:20	7 know who made the slide. But that the analysis that	11:01:10
8 Q And she testified that this slide -- and	10:59:22	8 arrived at these numbers was done by a team of	11:01:14
9 looking at Slide No. 4 -- let me back up.	10:59:27	9 people --	11:01:17
10 Slide No. 4 is the one that you rely upon	10:59:32	10 Q What --	11:01:18
11 for the value of accelerated development, right?	10:59:36	11 A -- is my understanding.	11:01:18
12 A I do.	10:59:39	12 Q -- and what do you base that on?	11:01:20
13 Q And did you see Ms. Qi's testimony saying	10:59:40	13 A I think her testimony.	11:01:21
14 that Uber never relied upon this slide?	10:59:42	14 Q And you said that the length of time that	11:01:22
15 A I --	10:59:45	15 Ms. Qi had been at Uber could be relevant to your	11:01:24
16 MR. EISEMAN: Objection as to form.	10:59:45	16 analysis. How?	11:01:29
17 A -- yeah, I'm not sure if that's what she	10:59:46	17 A Well, again, the more knowledgeable you	11:01:29
18 said, but I do -- I did read her testimony on this	10:59:48	18 are about this industry, the -- everything else	11:01:31
19 subject.	10:59:51	19 being equal, the better you are -- would be able to	11:01:35
20 Q (BY MR. BERRY) And did you read Ms. Qi's	10:59:51	20 predict white -- what might happen to the industry.	11:01:38
21 testimony saying that this slide was never used by	10:59:52	21 Q And, sir, what level of knowledge did	11:01:42
22 Uber?	10:59:56	22 Ms. Qi have about the autonomous vehicle industry?	11:01:44
23 MR. EISEMAN: Objection as to form.	10:59:56	23 MR. EISEMAN: Objection as to form.	11:01:47
24 A I -- I at least read something that	11:00:00	24 A I -- I -- I read her deposition. I don't	11:01:49
25 sounded like that.	11:00:02	25 think that question was asked, so I don't have any	11:01:51
Page 70		Page 72	
1 Q (BY MR. BERRY) And the fact that -- if	11:00:04	1 information on that subject.	11:01:53
2 true, the fact that Uber never used this slide, how	11:00:05	2 Q (BY MR. BERRY) You just don't know?	11:01:54
3 does that impact your analysis?	11:00:10	3 A I don't know.	11:01:56
4 MR. EISEMAN: Objection as to form.	11:00:12	4 Q And in this slide that we're looking at on	11:01:57
5 A Well, it doesn't, because I don't know how	11:00:13	5 Exhibit 299, Ms. Qi does not provide the formula	11:02:06
6 they would use it. The -- the -- people were just	11:00:14	6 that she used to calculate the value of accelerated	11:02:09
7 being asked -- you know, she was just asked, you	11:00:19	7 development, right?	11:02:13
8 know: What is the effect of a one- to two-year	11:00:20	8 A She does not.	11:02:14
9 acceleration in our development schedule?	11:00:22	9 Q And for the opinions you offered in this	11:02:16
10 Financially what impact that would be on	11:00:27	10 case, sir, you are still comfortable relying on	11:02:17
11 us. I don't know what use you would make of that	11:00:29	11 Slide 4, despite not knowing the formula, right?	11:02:22
12 after that information was communicated to the	11:00:31	12 A Yes.	11:02:25
13 executives at Uber --	11:00:34	13 Q And, sir, you were still comfortable	11:02:25
14 Q (BY MR. BERRY) So --	11:00:35	14 relying on Slide 4, even though you could not test	11:02:28
15 A -- so that doesn't surprise me that it	11:00:35	15 the formula, right?	11:02:30
16 wasn't used.	11:00:38	16 A Yes.	11:02:31
17 Q How long had Ms. Qi been at Uber when she	11:00:39	17 Q If Ms. Qi testified in her deposition that	11:02:39
18 prepared this slide?	11:00:42	18 this slide was never used by Uber, you have no	11:02:41
19 A I -- I don't have her employment history	11:00:43	19 reason to dispute that, right?	11:02:45
20 to know that.	11:00:45	20 MR. EISEMAN: Objection as to form.	11:02:46
21 Q Is it relevant to the analysis you did?	11:00:46	21 A I -- I do not. I would expect that she	11:02:47
22 A I think there's some relevance. But	11:00:50	22 was telling the truth at her deposition, at least	11:02:49
23 again, you -- you say she did the analysis. This	11:00:52	23 based on her state of mind.	11:02:52
24 was done with a team of people.	11:00:55	24 Q (BY MR. BERRY) Was this slide concerning	11:02:55
25 She presented it. She was in charge of	11:00:57	25 the value of -- of any accelerated development	11:02:58
Page 71		Page 73	

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1 presented to the Uber board at any time?	11:03:02	1 vehicles with no safety driver in these 13 cities?	11:05:11
2 A I -- I -- I have no information one way or	11:03:05	2 MR EISEMAN: Objection as to form	11:05:15
3 the other. I don't believe it was. It may or may	11:03:07	3 A Well, the question -- right question for	11:05:16
4 not have been, but I didn't assume that it was.	11:03:10	4 me to the consider and you to ask is: Is it legal	11:05:17
5 Q We can look at Exhibit 299 and Slide 4 and	11:03:19	5 in 2022?	11:05:21
6 see what some of the assumptions, right?	11:03:22	6 None of us knows That is some	11:05:23
7 A Yes, we can.	11:03:25	7 uncertainty	11:05:24
8 Q And one of the assumptions that we know is	11:03:25	8 Q (BY MR. BERRY) You just don't know one way	11:05:24
9 that Ms. Qi used a 15 percent discount rate for the	11:03:27	9 or the other, right?	11:05:27
10 present value calculations, right?	11:03:30	10 A I -- I don't know No one can answer that	11:05:28
11 A We do.	11:03:35	11 question right now Now, based on, again,	11:05:30
12 Q Sir, you did not evaluate the	11:03:35	12 subsequent, it appears it's more likely that that	11:05:33
13 reasonableness of using a 15 percent discount rate	11:03:37	13 will occur than when this projection was done, which	11:05:36
14 before arriving at your opinions in this case?	11:03:41	14 would mean that risk is lower and this rate should	11 05:40
15 MR. EISEMAN: Objection as to form.	11:03:43	15 be lower than 15 percent But I haven't made any	11:05:43
16 A I don't know what you mean by "evaluate."	11:03:43	16 such adjustment	11:05:46
17 I saw this. And based on my understanding of Uber	11:03:45	17 MR. BERRY: Move to strike as	11:05:48
18 being the leader in the transportation-as-a-service	11:03:49	18 nonresponsive	11:05:48
19 business, that that number seemed appropriate to me	11:03:52	19 Q (BY MR. BERRY) Did you do any work at all,	11:05:51
20 based on my understanding of their risk compared to	11:03:57	20 sir, to look at the regulatory environment of	11:05:52
21 others that were entering the market.	11:04:01	21 launching an autonomous vehicle before arriving at	11:05:58
22 Q (BY MR. BERRY) Sir, your Opening Report	11:04:02	22 your opinions in this case?	11:06:00
23 does not discuss the reasonableness of using a	11:04:05	23 A I have looked at some facts that are	11:06:05
24 15 percent discount rate, correct?	11:04:07	24 relevant to that, yes	11:06:09
25 A That is correct.	11:04:10	25 Q And did you discuss any analysis in your	11:06:11
Page 74		Page 76	
1 Q Sir, when selecting a discount rate to	11:04:14	1 Opening Report concerning the regulatory environment	11:06:13
2 use, you should look at the riskiness of the	11:04:17	2 and whether it's legal or illegal to launch an	11:06:16
3 proposed project, right?	11:04:20	3 autonomous vehicle program in certain cities?	11:06:19
4 A I agree --	11:04:21	4 A No	11:06:22
5 MR. EISEMAN: Objection as to form.	11:04:22	5 Q Another assumption underlying this model	11:06:33
6 A -- I agree with that.	11:04:22	6 and the fact that by 2022, that they're going to	11:06:40
7 Q (BY MR. BERRY) The riskier it is, the	11:04:24	7 have launched in 13 cities, is the timing of those	11:06:43
8 higher the discount rate?	11:04:26	8 launches, right?	11:06:47
9 A Everything else being equal, yes.	11:04:28	9 A That would be relevant, yes	11:06:48
10 Q You can see here on Ms. Qi's slide that	11:04:36	10 Q And that's not something that you	11:06:51
11 for the baseline city coverage -- and that's the one	11:04:38	11 considered the reasonableness of, right?	11:06:52
12 you used, right, sir? You -- you used the baseline?	11:04:41	12 A No I, again, assumed that Ms. Qi and her	11:06:54
13 A I did.	11:04:44	13 staff, who were conversant with the Rubicon modeling	11:06:58
14 Q And for the baseline, it assumed 13 cities	11:04:45	14 and the assumptions used, were properly using that	11:07:04
15 by 2022, right?	11:04:49	15 information	11:07:07
16 A It did.	11:04:51	16 Q But you just don't know one way or the	11:07:12
17 Q And, sir, you did not identify those 13	11:04:51	17 other?	11:07:14
18 cities in your Opening Report, right?	11:04:55	18 A I -- I don't know, no That -- none of	11:07:15
19 A I did not.	11:04:57	19 that information has -- has been produced to me	11 07:17
20 Q And you did not test the reasonableness of	11:04:57	20 Q And even though that information that you	11:07:19
21 assuming that Uber is going to launch in 13 cities	11:04:59	21 didn't have, you were still comfortable arriving at	11:07:23
22 by 2022, correct?	11:05:02	22 the opinions that you made in this case, right?	11:07:25
23 A No. And I have no ability to do that.	11:05:05	23 A I did And I'm very comfortable with	11:07:27
24 Q And, sir, you don't -- you didn't look to	11:05:07	24 doing that	11:07:29
25 see whether it's even legal to have autonomous	11:05:09	25 Q Another factor that goes into this present	11:07:36
Page 75		Page 77	

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1 value calculation on Slide 4 is the pricing of 11:07:40	1 proven false. Your analysis would still rely on the 11:10:02
2 future trips, right? 11:07:43	2 January 2016 slide, even though we now know it's 11:10:09
3 A I would agree with that. 11:07:44	3 false under this hypothetical? 11:10:12
4 Q And did you look and test the assumptions 11:07:45	4 MR. EISEMAN: Objection as to form. 11:10:14
5 underlying -- underlying the pricing of these trips? 11:07:49	5 A Yes. And I have no facts to know what 11:10:15
6 A Well, to answer your compound question, 11:07:54	6 you're suggesting. But the facts could go either 11:10:17
7 yes and no. 11:07:56	7 way or both ways. 11:10:19
8 Q And what did you do to test? 11:07:57	8 I need to know what the impact would be, 11:10:21
9 A Then you didn't listen to my answer -- or 11:07:59	9 even if that makes it relevant, what you would want 11:10:23
10 your question -- your second question, Did you look 11:08:01	10 me to do. 11:10:25
11 at or test? 11:08:03	11 Q (BY MR. BERRY) So that -- we have been 11:10:31
12 I didn't test. I -- I was aware and I 11:08:04	12 talking about the first variable, the value of 11:10:32
13 think I have seen in some Rubicon documents, 11:08:06	13 accelerated development. Let's move on now and talk 11:10:37
14 information about pricing. But I -- I didn't test 11:08:08	14 about the second variable, the length of 11:10:39
15 those assumptions. I assumed that your client knew 11:08:12	15 acceleration. 11:10:42
16 what they believed was the prices they would charge. 11:08:16	16 Now, for this accelerated development 11:10:48
17 Q So, sir, in some of the Rubicon 11:08:19	17 opinion, you're looking at future profits, right? 11:10:51
18 presentations that you saw, it disclosed future 11:08:21	18 A Future expected profits, yes. 11:10:55
19 pricing -- 11:08:25	19 Q So what you're looking at is the 11:10:58
20 A Yes -- 11:08:26	20 commercialization of this autonomous vehicle 11:11:02
21 Q -- correct? 11:08:26	21 technology, right? 11:11:05
22 A -- that's my recollection. 11:08:27	22 A Yes. 11:11:06
23 Q But you didn't test those assumptions? 11:08:29	23 Q The length of acceleration that you relied 11:11:12
24 A That is correct. 11:08:32	24 upon is the length of development, not 11:11:16
25 Q And, sir, for your unjust enrichment 11:08:32	25 commercialization, right? 11:11:19
Page 78	Page 80
1 opinion, it's your opinion that you should not look 11:08:57	1 A Well, yeah. But there's no 11:11:20
2 at events postdating the creation of this slide; is 11:08:59	2 commercialization until there's development. So to 11:11:22
3 that fair? 11:09:03	3 the extent you accelerate development, you 11:11:24
4 MR. EISEMAN: Objection as to form 11:09:03	4 commercialize that much earlier. 11:11:27
5 A I think that's fair for the -- the type of 11:09:05	5 Q That's not necessarily true, though, is 11:11:29
6 damages that I have calculated 11:09:06	6 it? 11:11:31
7 Q (BY MR. BERRY) And what do you mean by 11:09:07	7 A Well, I think it is -- 11:11:31
8 "the type of damages"? 11:09:08	8 MR. EISEMAN: Objection as to form. 11:11:32
9 A Again, they -- I have calculated what's 11:09:10	9 A -- absolutely true. 11:11:33
10 called expectancy damages, what -- what was the 11:09:12	10 Q (BY MR. BERRY) That for each component 11:11:34
11 alleged wrongdoer forecasting or believing at the 11:09:16	11 part that you accelerate the -- the development of, 11:11:36
12 time that they did what they are accused of doing 11:09:20	12 it's your opinion that would also accelerate the 11:11:38
13 Q So, sir, for an unjust enrichment major of 11:09:25	13 commercialization of it? 11:11:42
14 damages, it's your understanding that you should not 11:09:29	14 A No. That was not your question or my 11:11:43
15 look at later events in calculating that number? 11:09:32	15 answer. No. And I know this is a point of 11:11:45
16 MR. EISEMAN: Objection as to form 11:09:36	16 disagreement between your technical expert and Mr. 11:11:47
17 A For a theft of trade secret case, yes 11:09:37	17 Hesselink -- or Dr. Hesselink and also your damage 11:11:49
18 Q (BY MR. BERRY) And what is that based on, 11:09:40	18 experts and me that -- and -- and I cited the 11:11:52
19 sir? 11:09:42	19 information in my report. 11:11:56
20 A Again, it's my experience. I'm not citing 11:09:42	20 But -- and your client believes that 11:11:58
21 you a case for that proposition. You know, I have 11:09:44	21 these -- this development was on the critical path 11:12:00
22 written on the subject, and that's just my 11:09:49	22 of their development. And -- and I was, before my 11:12:05
23 experience 11:09:52	23 40-year career in this industry, a cost and 11:12:07
24 Q Assume, sir, that every assumption that 11:09:53	24 scheduling engineer. I fully understand the 11:12:10
25 this January 2016 modeling was based on is now 11:09:58	25 implication of being on the critical path. 11:12:12
Page 79	Page 81

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1 And if -- if what I have been told is 11:12:14
 2 correct, which is the belief of your client and 11:12:18
 3 Dr. Hesselink, then the -- the way I have applied 11:12:21
 4 the facts of this case is entirely appropriate. 11:12:23
 5 Q Sir, in your Opening Report did you 11:12:28
 6 discuss at all how these nine trade secrets would 11:12:31
 7 advance the commercial -- the commercialization of 11:12:35
 8 Uber's technology? 11:12:38
 9 A I -- I think -- I don't know if I discuss 11:12:39
 10 it. It's clearly implied by the way I use the 11:12:41
 11 information in my report. 11:12:44
 12 Q But you don't discuss it, do you? 11:12:46
 13 A I -- I -- I didn't think it was necessary. 11:12:47
 14 But no, so I did not. 11:12:49
 15 Q And you would agree, sir, that advanced 11:12:51
 16 development alone is not going to get you profits -- 11:12:53
 17 MR. EISEMAN: Objection -- 11:12:57
 18 Q -- in the commercial? 11:12:57
 19 MR. EISEMAN: -- objection as to form. 11:12:59
 20 A I agree with that. 11:13:00
 21 Q (BY MR. BERRY) For example, advanced 11:13:06
 22 development alone will not necessarily advance 11:13:07
 23 regulatory hurdles? 11:13:11
 24 MR. EISEMAN: Objection as to form. 11:13:16
 25 A No, I don't -- I think there is some 11:13:16

Page 82

1 relationship, but there's also some independence of 11:13:18
 2 those variables. 11:13:21
 3 Q (BY MR. BERRY) And likewise, advanced 11:13:21
 4 development alone is not necessarily going to affect 11:13:25
 5 consumer demand and adoption issues? 11:13:29
 6 MR. EISEMAN: Objection as to form. 11:13:32
 7 A Well, I think it will. I -- if you -- the 11:13:35
 8 question is will it change consumer demand. I -- 11:13:38
 9 I -- I think the consumer demand will be what it is 11:13:47
 10 when this service is introduced. And I think then 11:13:50
 11 the growth in demand over time will be accelerated 11:13:53
 12 permanently if you get to the market earlier. 11:13:58
 13 Q (BY MR. BERRY) Sir, each of the nine trade 11:14:04
 14 secrets at issue in this case is directed at LiDAR 11:14:06
 15 technology, right? 11:14:10
 16 A It is. 11:14:10
 17 Q And LiDAR, obviously, also includes other 11:14:11
 18 technology that is not encompassed by the nine trade 11:14:14
 19 secrets, right? 11:14:17
 20 A I agree with that. 11:14:18
 21 Q A lot of other technology? 11:14:19
 22 A I agree with that. 11:14:20
 23 Q And LiDAR is only one of many systems in 11:14:22
 24 an autonomous vehicle? 11:14:26
 25 A That's true. 11:14:28

Page 83

1 Q And some of these other systems include 11:14:29
 2 cameras? 11:14:31
 3 A Yes. 11:14:32
 4 Q Radar? 11:14:32
 5 A Yes. 11:14:33
 6 Q Sonar? 11:14:35
 7 A I don't think in your client's product -- 11:14:36
 8 or my client's product, but I think some people have 11:14:38
 9 suggested using sonar. 11:14:41
 10 Q Software? 11:14:43
 11 A Clearly. 11:14:44
 12 Q And the vehicle itself? 11:14:45
 13 A Certainly. 11:14:48
 14 Q Your -- your report, sir, does not discuss 11:14:52
 15 how a trade secret related to LiDAR could advance 11:14:55
 16 development of these other systems, does it? 11:15:00
 17 A No. I think that many of those other 11:15:03
 18 systems -- not all, but some -- are dependent upon 11:15:05
 19 the finalization of your LiDAR development. But 11:15:10
 20 that's really a technical question. I'm not giving 11:15:13
 21 an independent opinion. I think Dr. Hesselink will 11:15:16
 22 do that. And I'm relying upon his judgment. 11:15:19
 23 Q So looking only now, sir, at the work that 11:15:23
 24 you did -- that you personally did, you're not 11:15:25
 25 saying that advancing LiDAR is going to have an 11:15:28

Page 84

1 effect on the development of cameras -- 11:15:32
 2 MR. EISEMAN: Objection -- 11:15:35
 3 Q (BY MR. BERRY) -- at Uber, right? 11:15:35
 4 MR. EISEMAN: -- objection as to form 11:15:37
 5 A No, I have not 11:15:37
 6 Q (BY MR. BERRY) Let's take a -- a concrete 11:15:39
 7 example here Trade Secret 13, do you remember what 11:15:44
 8 13 is? It's the [REDACTED] 11:15:47
 9 A I do 11:15:50
 10 Q You're not saying, sir, that Trade 11:15:51
 11 Secret 13 related to [REDACTED] is going to 11:15:53
 12 advance development of cameras, right? 11:15:57
 13 A I am not 11:16:00
 14 Q And you're not saying that the Trade 11:16:00
 15 Secret 13 relating to [REDACTED] is going to 11:16:01
 16 advance software? 11:16:05
 17 A Oh, it might Yes, it -- that, I think -- 11:16:06
 18 even though -- again, you can Daubert me if you want 11:16:08
 19 on this 11:16:12
 20 But based on my understanding, it would 11:16:13
 21 And I am an engineer, not in this space But I 11:16:15
 22 understand -- believe that Dr. Hesselink will 11:16:18
 23 testify that there is a relation; that until you 11:16:19
 24 solidify these hardware designs, that -- that a lot 11:16:23
 25 of software can't be completed 11:16:27

Page 85

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1 Q Sir, are you saying that it's your opinion 11:16:29
 2 in this case that until Trade Secret 13 on the 11:16:31
 3 [REDACTED], that Uber can not be working on 11:16:34
 4 software? 11:16:38
 5 A Oh, absolutely not. And again, that's not 11:16:38
 6 the question you just asked. 11:16:40
 7 And again, what I'm telling you now -- 11:16:41
 8 we're kind of wasting time. I'm not the technical 11:16:43
 9 expert. I'm not going to be saying this at trial. 11:16:46
 10 These are questions for Dr. Hesselink. 11:16:49
 11 THE COURT REPORTER: Wait. 11:16:51
 12 Q (BY MR. BERRY) Let's put it this way: The 11:16:52
 13 team working on [REDACTED] is different from 11:16:55
 14 the team working on software, as far as you know? 11:16:57
 15 A Again, I don't know that, but that would 11:17:00
 16 be my expectation. 11:17:03
 17 Q And certainly, sir, any advancement in 11:17:08
 18 [REDACTED] is not necessarily going to impact 11:17:12
 19 the regulatory environment? 11:17:15
 20 MR. EISEMAN: Objection as to form. 11:17:18
 21 A Probably not. 11:17:19
 22 MR. BERRY: I need to take a quick break 11:17:20
 23 to look at something. 11:17:26
 24 THE VIDEOGRAPHER: Oh, okay. This is the 11:17:27
 25 end of Disk 1 in Volume I in the deposition of 11:17:29
 Page 86

1 Mr Wagner It's 11:17 a m 11:17:33
 2 (A break was taken from 11:17 a m to 11:17:36
 3 11:29a m) 11:17:40
 4 THE VIDEOGRAPHER: We are back on the 11:29:11
 5 record This is the beginning of Disc 2 in Volume I 11:29:11
 6 in the deposition of Mr Wagner It's 11:29 a m 11:29:18
 7 Q (BY MR. BERRY) Sir, we were discussing the 11:29:22
 8 second variable in the accelerated development, the 11:29:24
 9 length of time 11:29:28
 10 A We were 11:29:29
 11 Q And I want to now focus on Trade 11:29:30
 12 Secret 25 Do you recall that's the [REDACTED] 11:29:32
 13 A I do 11:29:35
 14 Q And you relied on Dr Hesselink to give 11:29:35
 15 you the time it would take Waymo to independently 11:29:40
 16 develop Trade Secret 25? 11:29:45
 17 A Yes 11:29:46
 18 MR. EISEMAN: Objection as to form 11:29:46
 19 Q (BY MR. BERRY) It was the time it did take 11:29:47
 20 Waymo, right? 11:29:48
 21 A Oh, I'm -- I'm not exactly sure what -- 11:29:49
 22 the basis of his two years It was either what it 11:29:53
 23 took Waymo or what he believes it will take Uber I 11:29:56
 24 don't know which one it was -- 11:29:59
 25 Q Okay 11:30:02
 Page 87

1 A -- it is. 11:30:02
 2 Q (BY MR. BERRY) Okay. And the Trade 11:30:03
 3 Secret 25 encompasses a number of [REDACTED] 11:30:04
 4 right? 11:30:07
 5 A It does. 11:30:08
 6 Q Do you know how many? 11:30:09
 7 [REDACTED] 11:30:12
 9 Q Okay. And Waymo has alleged that Uber 11:30:14
 10 [REDACTED] 11:30:17
 11 right? 11:30:20
 12 A I'm not aware of that. 11:30:22
 13 Q And if it is, in fact, true that Waymo is 11:30:23
 14 alleging that Uber misappropriated only some of the 11:30:28
 15 [REDACTED], it would be improper to use the 11:30:31
 16 entire two years for Trade Secret 25, right? 11:30:35
 17 MR. EISEMAN: Objection as to form. 11:30:38
 18 A I -- it's an incomplete hypothetical. I 11:30:38
 19 would need more facts to know. But even if I had 11:30:41
 20 those facts, that's a question for Dr. Hesselink. 11:30:45
 21 That's a technical question. 11:30:46
 22 Q (BY MR. BERRY) For purposes of your 11:30:48
 23 damages analysis, sir, you would want to know how 11:30:49
 24 long it would take Uber to design the particular 11:30:52
 25 [REDACTED] that were misappropriated, correct? 11:30:56
 Page 88

1 A I think that's relevant, yes. 11:30:59
 2 Q And it's fewer than all the [REDACTED] 11:31:01
 3 in Trade Secret 25, you would want to know that? 11:31:04
 4 MR. EISEMAN: Objection as to form. 11:31:07
 5 A No. That's not -- not a fact in evidence. 11:31:08
 6 I think I would need to ask Dr. Hesselink if that 11:31:11
 7 affects his opinion. 11:31:13
 8 And if it does and he says, Based on the 11:31:14
 9 information I have now and a more limited subset of 11:31:18
 10 [REDACTED], I think they could do it in a year, 11:31:22
 11 I would change my calculation. 11:31:25
 12 Q (BY MR. BERRY) Let's put it this way, sir: 11:31:27
 13 In your Opening Report, you did not apportion Trade 11:31:29
 14 Secret 25 based on the [REDACTED] 11:31:35
 16 MR. EISEMAN: Objection as to form. 11:31:37
 17 A No. And even -- even -- I -- I think I do 11:31:37
 18 know what you're talking about. That -- I believe 11:31:39
 19 Waymo has only found evidence of [REDACTED] 11:31:47
 21 [REDACTED] something like that. 11:31:47
 22 But that doesn't mean that your client 11:31:50
 23 isn't using them. That they -- my client just 11:31:52
 24 hasn't found it yet. And -- but even if that is 11:31:55
 25 true, it may be that these [REDACTED] 11:32:02
 [REDACTED] and it would still take two years. 11:32:02
 Page 89

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1 But that's a question for Dr. Hesselink, not for 11:32:04	1 what's been marked as Exhibit 2274. And do you 11:33:57
2 Mike Wagner. 11:32:06	2 recognize these as Uber's responses to 11:34:01
3 Q (BY MR. BERRY) You just don't know, sir, 11:32:08	3 interrogatories? 11:34:05
4 do you? 11:32:09	4 A I do. 11:34:06
5 A I -- I don't. And if I did, you -- you 11:32:10	5 Q And, sir, you relied on this document? 11:34:06
6 should appropriately Daubert me, if I did. 11:32:12	6 A Yes. 11:34:09
7 Q And you spoke with Dr. Hesselink, right? 11:32:14	7 Q If you could please turn to page 4. This 11:34:10
8 A No, I have never spoken with him. Have 11:32:16	8 is the -- the interrogatory response that you relied 11:34:18
9 you seen any evidence that I said I had a 11:32:18	9 upon to get the time to independently develop all of 11:34:22
10 conversation with him? No. I have reviewed his 11:32:20	10 the trade secrets except for 25 and 111 -- 11:34:27
11 report. Or actually, just parts of his report. 11:32:22	11 MR. EISEMAN: Objection as to form. 11:34:32
12 Q Did you -- 11:32:24	12 Q (BY MR. BERRY) -- and 90? 11:34:34
13 THE COURT REPORTER: Wait. 11:32:24	13 A Yes. You said that well. 11:34:35
14 Q (BY MR. BERRY) Did you ever want to speak 11:32:25	14 Q In the middle -- 11:34:38
15 with Dr. Hesselink? 11:32:26	15 MR. EISEMAN: I'll withdraw my objection. 11:34:40
16 A I never saw any need, because the 11:32:27	16 And I apologize for interrupting you in the middle 11:34:41
17 information that I needed to rely upon him was in a 11:32:29	17 of your question. 11:34:44
18 written report. 11:32:33	18 Q (BY MR. BERRY) In the middle of page 4, 11:34:44
19 And that's what I tell every lawyer who I 11:32:34	19 Uber writes in this interrogatory response -- it 11:34:46
20 hire -- I am retained by, when I have to rely on a 11:32:37	20 says, The scheduled times identified for the 11:34:50
21 technical expert, I said, What I need to rely on, I 11:32:41	21 redesigns below would not significantly or 11:34:52
22 want it in a written report so the other side has a 11:32:41	22 materially impact the timeline for commercialization 11:34:56
23 chance to -- 11:32:53	23 and rollout of Uber's fully anonymous self-driving 11:34:58
24 THE COURT REPORTER: I need -- 11:32:53	24 technology to the general public. 11:35:03
25 A -- test it. 11:32:53	25 Do you see that? 11:35:05
Page 90	Page 92
1 THE COURT REPORTER: -- you to slow down, 11:32:53	1 A You know, I'm -- I'm not seeing where 11:35:05
2 please 11:32:53	2 you're reading, but I know -- I have read that 11:35:07
3 A I'm sorry I -- I want every opinion that 11:32:53	3 before, and you -- and I believe you have read it 11:35:09
4 I'm relying upon to be in a report so the other side 11:32:53	4 correctly. 11:35:11
5 has fair notice of it; they have a chance to depose 11:32:53	5 Q And, sir, that's something in 11:35:11
6 the expert on it, rather than some private 11:32:56	6 Interrogatory 1, the response to, that you rejected? 11:35:13
7 conversation that I have with the technical expert 11:33:00	7 A I -- I didn't reject it. Well, I did 11:35:18
8 And my client accommodated that request in this 11:33:01	8 reject it based on the expert report of 11:35:21
9 case 11:33:04	9 Dr. Hesselink and the documents where your client 11:35:24
10 Q (BY MR. BERRY) Sitting here right now, 11:33:07	10 says that development of LiDAR is critical to their 11:35:29
11 sir, you don't know how long it would take -- or 11:33:07	11 development. 11:35:33
12 that it took Waymo to develop the 11:33:09	12 Q Sir, this is Uber itself saying that 11:35:34
13 at issue, correct? 11:33:12	13 independently developing these trade secrets is not 11:35:37
14 A I -- 11:33:13	14 going to have a significant or material impact on 11:35:40
15 MR. EISEMAN: Objection -- 11:33:14	15 the timeline for commercialization, correct? 11:35:42
16 A -- don't 11:33:14	16 A It does. 11:35:44
17 MR. EISEMAN: -- as to form 11:33:14	17 Q And yet you assumed the opposite, right? 11:35:45
18 A Sorry 11:33:15	18 A Yes. 11:35:48
19 Q (BY MR. BERRY) What was your response, 11:33:17	19 Q And your basis for doing so is only based 11:35:49
20 sir? 11:33:18	20 on Dr. Hesselink, right? 11:35:52
21 A I don't 11:33:19	21 A And the other thing I just told you in the 11:35:54
22 (Exhibit 2274 was marked for 11:33:20	22 previous answer. 11:35:57
23 identification and is attached to the transcript) 11:33:20	23 Q It being a -- what you call a critical 11:35:57
24 A Thank you 11:33:49	24 path? 11:35:59
25 Q (BY MR. BERRY) Sir, I have handed you 11:33:50	25 A Right. A number of statements by a number 11:35:59
Page 91	Page 93

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1 of people in your client who said that.	11:36:02	1 I would come up with 3.85 years?	11:38:08
2 Q But what they didn't say is that it's	11:36:04	2 A I have never done the calculation, but I	11:38:11
3 going to be a serial process where you can't -- you	11:36:07	3 know your math is good based on prior experience.	11:38:13
4 know, you have to finish one project before you	11:36:10	4 That would be correct.	11:38:16
5 start another one, right?	11:36:12	5 Q But, sir, you're -- if all eight of these	11:38:17
6 MR. EISEMAN: Objection. Objection as to	11:36:13	6 trade secrets are misappropriated, you're not saying	11:38:20
7 form.	11:36:13	7 it's going to advance the development in	11:38:22
8 A No one has ever used the word "serial"	11:36:14	8 commercialization of Uber by 3.85 years, right?	11:38:25
9 except for your -- your damage experts. So yeah,	11:36:18	9 A I am not. I -- I mean, it is possible	11:38:29
10 that's the only people I have ever seen use that	11:36:20	10 that if all eight are being used, that it is	11:38:31
11 term. Oh, I -- pardon me. I also saw lawyers write	11:36:23	11 something above 2. But I don't have the information	11:38:36
12 it in the Daubert motion.	11:36:30	12 to calculate that --	11:38:38
13 Q (BY MR. BERRY) Sir, let's look at your	11:36:33	13 Q It's --	11:38:41
14 damages table in paragraph 285 of your report,	11:36:37	14 A -- and so I have made the assumption that	11:38:41
15 please. Sir, you assume --	11:36:42	15 along the critical path of LiDAR, all of these eight	11:38:43
16 A Pardon me. Excuse me. Your question, I	11:36:59	16 developments can be -- being done concurrently. Not	11:38:47
17 think, said page 285. Did --	11:37:00	17 serially, but concurrently.	11:38:51
18 Q Paragraph.	11:37:03	18 Q A question on paragraph 280 of your	11:39:01
19 A -- you mean paragraph?	11:37:03	19 report. In paragraph 280, you say, It's my opinion	11:39:04
20 Q Thank you.	11:37:04	20 that it's most reasonable to use the optimistic city	11:39:11
21 A So it's on page 107, if you're trying to	11:37:04	21 coverage range of incremental profit to measure the	11:39:15
22 find it for anyone else in the room.	11:37:07	22 value of accelerated development.	11:39:17
23 Q And, sir, for Trade Secret 25, you assume	11:37:09	23 That was a mistake, right?	11:39:20
24 that it would accelerate the development by two	11:37:12	24 A No, it was not a mistake.	11:39:22
25 years, right?	11:37:14	25 Q And then you state in the following	11:39:23
Page 94		Page 96	
1 A Yes, and on the critical path.	11:37:15	1 sentence, Therefore, the value of accelerated AV	11:39:25
2 Q And in this Figure 10, you identify your	11:37:17	2 development, I used Uber's incremental profit	11:39:29
3 assumption for each of the trade secrets for	11:37:21	3 calculations of 1.585 billion.	11:39:32
4 accelerating the development, right?	11:37:24	4 You -- you -- I guess you put	11:39:36
5 A No.	11:37:26	5 1,585 million for one year and 2,610 million for two	11:39:38
6 Q Each of them other than Trade Secret 90?	11:37:26	6 years.	11:39:44
7 A No.	11:37:29	7 Do you see that, sir?	11:39:44
8 Q Which other one do you not --	11:37:33	8 A I do. And that's in my report.	11:39:45
9 A Well --	11:37:34	9 Q But your opinions are based off the	11:39:47
10 Q -- identify?	11:37:35	10 baseline coverage?	11:39:50
11 A -- I'm trying to be responsive to your	11:37:35	11 A Yes, I use these numbers. I report them a	11:39:52
12 question. You said my assumption. These aren't my	11:37:36	12 couple times in my report. But I -- I believe the	11:39:55
13 assumptions. These are assumptions that your client	11:37:39	13 more reasonable number to use is the baseline, and	11:39:57
14 and Dr. Hesselink -- they're not Mike Wagner's	11:37:42	14 that's the numbers I'm going to put forward at	11:40:00
15 assumptions.	11:37:44	15 trial.	11:40:04
16 Q So let me rephrase. The assumptions that	11:37:45	16 Q Let's move on to your second opinion, sir,	11:40:06
17 you used and relied upon, sir, are contained in	11:37:46	17 the avoided cost opinion.	11:40:09
18 Figure 10?	11:37:50	18 And the -- the foundation for that opinion	11:40:17
19 A Yes.	11:37:51	19 is that by misappropriating these trade secrets,	11:40:20
20 Q And those assumptions that you relied upon	11:37:52	20 that Uber was able to avoid some development --	11:40:23
21 have the length of accelerated development?	11:37:56	21 developmental costs; is that fair?	11:40:26
22 A Yes.	11:37:59	22 A Yes.	11:40:29
23 Q And if you were -- for these eight trade	11:37:59	23 Q And for that opinion, there are two	11:40:31
24 secrets listed in Figure 10, if you were to add up	11:38:02	24 variables. The first is the amount of cost savings?	11:40:34
25 the accelerated development for each of them, you	11:38:05	25 A On a monthly basis.	11:40:40
Page 95		Page 97	

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1 Q On a monthly basis? 11:40:41	1 Then in parentheses, he says, Month equal 11:42:43
2 A Yes. 11:40:42	2 20 million run rate. 11:42:46
3 Q And the second variable is the -- 11:40:42	3 Do you see that? 11:42:47
4 the length of time for any acceleration? 11:40:44	4 A I do. 11:42:48
5 A Yes. 11:40:47	5 Q And that's where you got your run rate? 11:42:48
6 Q The second variable is the same one that 11:40:48	6 A Yes. 11:42:50
7 you used for your first opinion, right? 11:40:50	7 Q What did you do, sir, to test to see 11:42:50
8 A It is. 11:40:53	8 whether that run rate was the actual Uber run rate? 11:42:53
9 Q So let's focus on your first variable, the 11:40:53	9 A Well, I didn't do anything. Again -- 11:42:56
10 monthly burn rate. And sir, you got the monthly 11:40:56	10 again, this is an expectancy measure of damages 11:42:58
11 burn rate from some notes from Mr. Bares; is that 11:41:01	11 around the time of the alleged theft. And this is 11:43:01
12 fair? 11:41:04	12 the only information I have as of that time. I have 11:43:04
13 A Yes -- 11:41:04	13 never seen any actual information as of this time. 11:43:07
14 MR. EISEMAN: Objection as to form. 11:41:04	14 Q Did you look for actual run rate 11:43:10
15 A -- that's fair. And I believe his 11:41:05	15 information at this time? 11:43:13
16 deposition testimony. 11:41:16	16 A I -- I asked if any was available, and my 11:43:14
17 (Exhibit 2275 was marked for 11:41:24	17 staff did not bring any to my attention. But -- so 11:43:17
18 identification and is attached to the transcript.) 11:41:24	18 I -- I made that attempt, but I didn't find 11:43:20
19 A Thank you. 11:41:25	19 anything. 11:43:22
20 Q (BY MR. BERRY) Sir, I have handed you 11:41:33	20 Q So did you assume that the 20 million run 11:43:23
21 what's been marked as Exhibit 2275. And. Sir, do 11:41:34	21 rate was in place in January of 2016? 11:43:26
22 you recognize these as the Bares notes that you 11:41:38	22 A I -- well, it was -- it was in place or a 11:43:29
23 relied upon? 11:41:40	23 good approximation for the time of the -- any 11:43:32
24 A It does. I recognize this document. 11:41:41	24 acceleration that I am measuring. 11:43:36
25 Q And the -- the burn rate that you used for 11:41:43	25 Q So my question was, sir: Did you assume 11:43:38
Page 98	Page 100
1 your analysis is at the top of the -- this first 11:41:49	1 the 20 million run rate was in place in January of 11:43:40
2 page of the notes, right? 11:41:51	2 2016? 11:43:43
3 A Yes. 11:41:54	3 A Oh, well, I guess I didn't really think 11:43:44
4 Q And these -- what we have here in 11:41:55	4 about that, to be perfectly honest. But I think I 11:43:46
5 Exhibit 227 is a long set of notes. I think it's 27 11:41:58	5 would have assumed that, because this is the head of 11:43:47
6 pages, right? 11:42:03	6 the department. And I think that he would be 11:43:50
7 A They're -- they are lengthy, yes. I don't 11:42:04	7 quoting what he believed his run rate was at the 11:43:52
8 know the number of pages. 11:42:06	8 time. 11:43:54
9 Q And these are notes from January 2016? 11:42:07	9 Q And, sir, did you assume that the 11:43:54
10 A Yes. 11:42:10	10 20 million run rate would remain at 20 million 11:43:56
11 Q And you got your burn rate from the top of 11:42:12	11 through the Year 2022? 11:44:00
12 this first page, right? 11:42:16	12 A No. I think it probably would change. 11:44:01
13 A I did. 11:42:18	13 But again, because it's expectancy measure, I -- I 11:44:03
14 Q And it is under the section that says "The 11:42:20	14 wouldn't change it. I mean, I -- I have seen now, 11:44:08
15 Chess Game." 11:42:23	15 since Mr. Bratic produced some information about 11:44:10
16 Do you see that? 11:42:24	16 more current run rates, that it is more than double 11:44:13
17 A Yes. 11:42:24	17 this. 11:44:16
18 Q And the third line down says, He. 11:42:24	18 But again, I don't think that's fair to 11:44:17
19 And I think that's referring to 11:42:27	19 use those numbers for an expectancy measure. 11:44:19
20 Mr. Levandowski; is that right? 11:42:29	20 Q When you say Mr. Bratic produced 11:44:23
21 A That's my assumption. 11:42:30	21 information, what information are you referring to? 11:44:25
22 Q "He would bring filtered advice about 11:42:31	22 A I -- I think he had some schedules that 11:44:27
23 when -- or what to try and not try, dot, dot, dot. 11:42:35	23 showed the -- the monthly run rate for developing 11:44:30
24 That is a day with him and our team could save us 11:42:38	24 the autonomous vehicle at Uber. 11:44:35
25 months towards 2020. 11:42:42	25 Q And so you had access to the same 11:44:37
Page 99	Page 101

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1 documents as Mr. Bratic, right?	11:44:40	1 the -- the testimony of your engineer, that -- and	11:46:48
2 A You know, I -- I never saw that document.	11:44:42	2 reading the report of Dr. Hesselink, that these	11:46:55
3 And if it's in my "Documents Considered List," the	11:44:43	3 estimates of time assume straight-line development.	11:46:57
4 answer is yes. But no one showed it to me at the	11:44:46	4 No problems, no issues, no software additional	11:47:02
5 time I issued my original opinion.	11:44:49	5 development. Those are not realistic assumptions.	11:47:08
6 Q And now that you have seen the documents	11:44:55	6 Q But this was the number you relied on,	11:47:11
7 that Mr. Bratic cites, does that change your	11:44:58	7 sir?	11:47:13
8 opinion?	11:45:00	8 A But it is -- I have nothing better. I	11:47:13
9 A No. Just like another one. Now, this --	11:45:00	9 think it's a conservative number. It -- and it is	11:47:15
10 this place, I could help my client by using the	11:45:02	10 the number I relied upon.	11:47:17
11 current information. But no, it does not change my	11:45:06	11 Q So to arrive at your avoided cost figure	11:47:19
12 opinion.	11:45:10	12 for Trade Secret 9, you take the four months that it	11:47:22
13 Q Because your opinion is to use the	11:45:10	13 would take to independently develop Trade Secret 9	11:47:25
14 expectancy in January of 2016 of the run rate?	11:45:12	14 and multiply that by the 20 million run rate?	11:47:28
15 A Correct.	11:45:17	15 A Correct.	11:47:33
16 Q And if later events change the -- that	11:45:17	16 Q So you would arrive at \$80 million?	11:47:33
17 expectancy, you disregard those because you're	11:45:20	17 A Approximately, yes.	11:47:35
18 looking for January 2016 expectancy?	11:45:24	18 Q And, sir, is it your opinion that Trade	11:47:36
19 MR. EISEMAN: Objection as to form.	11:45:26	19 Secret 9, by misappropriating that, Uber was able to	11:47:38
20 A Yes. And it -- what -- what -- again,	11:45:27	20 save \$80 million, right?	11:47:41
21 whether it helps my client or hurts my client, in	11:45:28	21 A Well, if -- and you said it -- it's my	11:47:43
22 that measure of damages, I think that information is	11:45:32	22 assumption. If, again, that -- this four months is	11:47:45
23 irrelevant.	11:45:34	23 on the critical path of development and your client	11:47:49
24 Q (BY MR. BERRY) And, sir, the run rate that	11:45:34	24 will get to market four months earlier, that that is	11:47:53
25 you used was the run rate for the entire Uber AV	11:45:36	25 the -- the cost that they have saved.	11:47:56
Page 102		Page 104	
1 organization, right?	11:45:41	1 Q And you didn't conclude it was on the	11:47:57
2 A Correct.	11:45:44	2 critical path, did you, personally?	11:48:01
3 Q And by using the run rate for the entire	11:45:48	3 A I -- I don't have enough facts to -- to	11:48:02
4 AV organization, you assumed that each trade secret	11:45:50	4 have an independent opinion of it But all the	11:48:05
5 would advance the development of the entire	11:45:53	5 facts I have seen are consistent with that position	11:48:08
6 department -- the entire program?	11:45:58	6 Q In fact, Uber's interrogatory response	11:48:11
7 A Not exactly, no. I assumed, again based	11:46:00	7 tells you it's not on the critical path, right?	11:48:14
8 on documents that I have reviewed and	11:46:04	8 A Yes In preparing for this litigation,	11:48:17
9 Dr. Hesselink's opinion, that these trade secrets	11:46:05	9 that's their statement I understand that And I	11:48:19
10 individually and in combination are in the -- on the	11:46:10	10 believe that's based on their independent expert who	11:48:22
11 critical path of development of the autonomous	11:46:13	11 has that opinion	11:48:25
12 vehicle.	11:46:16	12 Q And if, in fact, Uber is correct that	11:48:26
13 And if that's true, then it's appropriate	11:46:17	13 these trade secrets are not on the critical path,	11:48:27
14 to use all expenses of the department.	11:46:20	14 then your damages model does not work?	11:48:30
15 Q Let's look at Trade Secret 9. Again,	11:46:22	15 MR. EISEMAN: Objection as to form	11:48:35
16 that's the FAC lens. And it was your opinion, sir	11:46:24	16 A I would agree with that That -- that	11:48:35
17 -- or you relied on Uber to say that it would take	11:46:29	17 if -- if that's not the case, I would need to revise	11:48:36
18 four months to independently develop Trade Secret 9,	11:46:34	18 the times that I have to multiply the 20 million run	11:48:40
19 right?	11:46:37	19 rate by	11:48:45
20 A Right. And realizing the limitations of	11:46:38	20 Q (BY MR. BERRY) And you have not done that	11:48:46
21 that number. But I have nothing else to use, so I	11:46:40	21 work?	11:48:47
22 have used it, yes.	11:46:42	22 A No I have no information to do that	11:48:48
23 Q What do you mean, sir, by "the limitations	11:46:43	23 Q So for this Trade Secret 9 we have been	11:48:50
24 of that number"?	11:46:45	24 discussing, it is your opinion that it would save	11:48:52
25 A That -- that -- my understanding based on	11:46:46	25 Uber \$80 million, right?	11:48:54
Page 103		Page 105	

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1	A	Based on the inputs and the assumptions I	11:48:57
2		have been given, yes.	11:48:59
3	Q	When would Uber have realized those cost	11:49:01
4		savings?	11:49:03
5	A	They would realize it at -- at the time	11:49:05
6		they have accelerated their development.	11:49:07
7	Q	And when is that, sir?	11:49:10
8	A	I don't have any information on that. I	11:49:11
9		don't know.	11:49:13
10	Q	Has -- when did you assume Uber	11:49:13
11		misappropriated Trade Secret 9?	11:49:16
12	A	Again, I had a range. I -- I don't have	11:49:20
13		that information. That's liability questions. And	11:49:21
14		no one has told me when they -- they have actually	11:49:24
15		used it to accelerate the development. I don't	11:49:28
16		know.	11:49:29
17	Q	Well, I was asking: When did you assume	11:49:31
18		they misappropriated?	11:49:33
19	A	Oh, I -- you know, it's -- sometime in	11:49:34
20		the -- the late 2015 or early 2016 time frame is the	11:49:36
21		best I can give you.	11:49:41
22	Q	In that time from when they were assume --	11:49:43
23		when you assumed they misappropriated to the current	11:49:45
24		day, has Uber actually saved any costs, any money by	11:49:48
25		using Trade Secret 9?	11:49:53
Page 106			
1	MR. EISEMAN:	Objection as to form.	11:49:55
2	A	I -- that's a technical question. I -- I	11:49:55
3		have no information on that. I don't know.	11:49:57
4	Q	(BY MR. BERRY) You didn't look at that,	11:49:58
5		did you, sir?	11:50:00
6	A	No. And I -- and that's not in my area of	11:50:01
7		expertise. I wouldn't look at that, unless I want	11:50:04
8		to bill my client for work that's not useful.	11:50:07
9	Q	You concluded that Trade Secret 9 would	11:50:12
10		save Uber \$80 million, right?	11:50:15
11	A	Yes.	11:50:17
12	Q	Where would those cost savings be? What	11:50:18
13		line item on the P&L statement?	11:50:20
14	A	It would be on the -- well, it's -- it's	11:50:21
15		not one line item. It's the total expenses of	11:50:21
16		developing their autonomous vehicle. It's all those	11:50:25
17		expenses.	11:50:28
18	Q	So it would save them expenses in	11:50:28
19		San Francisco, right?	11:50:30
20	A	I would assume so.	11:50:32
21	Q	It would save them expenses in Pittsburgh?	11:50:33
22	A	I would assume so.	11:50:37
23	Q	Isn't it more reasonable to say that Trade	11:50:40
24		Secret 9, at most, is worth 150,000?	11:50:41
25	MR. EISEMAN:	Objection as to form.	11:50:46
Page 107			
1	A	Is that the number your expert has put	11:50:47
2		forward? If his assumptions are correct, yes. But	11:50:50
3		if they're wrong, no.	11:50:52
4	Q	(BY MR. BERRY) So let's now -- we have	11:51:01
5		been talking about Trade Secret 9. Let's turn to	11:51:02
6		Trade Secret 25. And you rely on the assumptions,	11:51:05
7		sir, that Trade Secret 25 would advance the	11:51:08
8		commercialization of Uber's AV program by two years,	11:51:11
9		right?	11:51:15
10	A	Yes.	11:51:16
11	Q	And by doing so, you assume that it would	11:51:17
12		save Uber two years' worth of the burn rate for the	11:51:20
13		entire AV organization, right?	11:51:24
14	A	I do.	11:51:26
15	Q	How did Trade Secret 25 save Uber money	11:51:31
16		with respect to cameras?	11:51:36
17	MR. EISEMAN:	Objection as to form.	11:51:38
18	A	I -- I have no idea if it has anything to	11:51:39
19		do with cameras. I -- I wouldn't believe that it	11:51:42
20		would.	11:51:44
21	Q	(BY MR. BERRY) How did Trade Secret 25	11:51:45
22		save Uber money with respect to radar?	11:51:48
23	A	I -- I -- again, I don't know the answer	11:51:51
24		to that question. Again, I do believe, even though	11:51:52
25		it's a semitechnical opinion, but based on my	11:51:57
Page 108			
1		engineering background that -- you know, again, as	11:52:01
2		you said before, not everyone in the organization	11:52:04
3		works on every part of the product. There are	11:52:07
4		independent teams working on these things. That --	11:52:07
5		those -- those items would be being developed	11:52:10
6		independently.	11:52:11
7	Q	Concurrently?	11:52:12
8	A	Concurrently. But if the entire timeline	11:52:14
9		is accelerated, then your client has avoided their	11:52:18
10		whole development effort by that period of time.	11:52:21
11		And there's two things that could happen.	11:52:24
12		One, a radar engineer does the final	11:52:27
13		complete, absolutely-done-radar technology, and they	11:52:31
14		would lay him off. Then I have overstated the	11:52:34
15		numbers.	11:52:37
16		Or it's more likely that he would be doing	11:52:37
17		tweaks and other things or they would be playing	11:52:40
18		poker while they're waiting for someone else to	11:52:42
19		catch up, and they're -- they're now on the critical	11:52:44
20		path again.	11:52:47
21	THE COURT REPORTER:	Wait.	11:52:48
22	A	Other things might happen. I can't model	11:52:48
23		that.	11:52:51
24	Q	(BY MR. BERRY) You just don't know, right?	11:52:51
25	A	No, I -- I don't know. But again, based	11:52:52
Page 109			

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<p>1 on your client's statements of the existential 11:52:54</p> <p>2 threat that AV does to their historical business and 11:52:58</p> <p>3 they're putting tons of money, now doubling the 11:53:02</p> <p>4 development costs, the chances are they -- they 11:53:06</p> <p>5 would not be laying anyone off. In fact, they may 11:53:07</p> <p>6 even be hiring more people during this time period. 11:53:10</p> <p>7 Q Is it every component of later -- of LiDAR 11:53:14</p> <p>8 on the critical path? 11:53:15</p> <p>9 MR. EISEMAN: Objection as to form. 11:53:17</p> <p>10 A I don't know the answer to that question. 11:53:18</p> <p>11 Again, that would be a question for Dr. Hesselink. 11:53:18</p> <p>12 Q (BY MR. BERRY) Now, sir, if Uber didn't 11:53:22</p> <p>13 misappropriate Trade Secret 25, you assume it would 11:53:24</p> <p>14 take them two years to independently develop that? 11:53:29</p> <p>15 A I have been told that by Dr. Hesselink. 11:53:34</p> <p>16 Q And according to the work that you have 11:53:35</p> <p>17 done, sir, you assume that nothing else is going to 11:53:36</p> <p>18 happen at Uber during those two years, but costs are 11:53:39</p> <p>19 going to continue occurring? 11:53:42</p> <p>20 A That's absolutely false. I didn't make 11:53:44</p> <p>21 that assumption. And Mr. Bratic doesn't know what 11:53:46</p> <p>22 he's talking about when he criticized me for that. 11:53:50</p> <p>23 No. I do think that all of these people 11:53:50</p> <p>24 will be doing things in that time period. They're 11:53:52</p> <p>25 just not advancing the ball to getting their product 11:53:55</p> <p style="text-align: right;">Page 110</p>	<p>1 MR. EISEMAN: Objection as to form. 11:54:50</p> <p>2 A I agree with that. 11:54:51</p> <p>3 Q (BY MR. BERRY) Let's move on to Trade 11:54:52</p> <p>4 Secret 90 now, sir. It's your Tyto opinion. And 11:54:53</p> <p>5 Tyto -- Trade Secret 90 relates to fiber lasers; is 11:54:58</p> <p>6 that right? 11:55:03</p> <p>7 A That's my understanding. 11:55:03</p> <p>8 Q And you understand that Uber does not 11:55:04</p> <p>9 currently use Trade Secret 90? 11:55:06</p> <p>10 A That's -- that -- I have been told that. 11:55:09</p> <p>11 yes. 11:55:09</p> <p>12 Q And according to Waymo's expert, 11:55:11</p> <p>13 Dr. Hesselink, he opines that Uber's 11:55:13</p> <p>14 misappropriation of Trade Secret 90 saved it two 11:55:17</p> <p>15 years and five months based on the acquisition of 11:55:21</p> <p>16 Tyto? 11:55:25</p> <p>17 A Yes. 11:55:25</p> <p>18 Q And your accelerated development opinion 11:55:26</p> <p>19 is based on time savings, right? 11:55:28</p> <p>20 A Yes. 11:55:32</p> <p>21 Q So if we were to take those two years and 11:55:32</p> <p>22 five months and put it into your accelerated 11:55:34</p> <p>23 development model, it would say that Trade Secret 90 11:55:37</p> <p>24 is worth over \$2 billion, right? 11:55:39</p> <p>25 A It would. 11:55:42</p> <p style="text-align: right;">Page 112</p>
<p>1 to market 11:53:58</p> <p>2 Q Because the one critical path at Uber is 11:53:59</p> <p>3 Trade Secret 25? 11:54:02</p> <p>4 MR. EISEMAN: Objection as to form 11:54:03</p> <p>5 A No, it's not the one. There's probably 11:54:03</p> <p>6 plenty of them. I mean, I have developed critical 11:54:06</p> <p>7 paths in my work as an engineer, and there's plenty 11:54:07</p> <p>8 of tasks on the critical path. But wherever you are 11:54:07</p> <p>9 on the critical path -- 11:54:14</p> <p>10 THE COURT REPORTER: Please slow down 11:54:14</p> <p>11 A -- there is going to be certain items that 11:54:15</p> <p>12 everyone else is waiting on before the next steps 11:54:17</p> <p>13 can be taken 11:54:19</p> <p>14 Q (BY MR. BERRY) And, sir, did you assume 11:54:20</p> <p>15 that Trade Secret 25 is an bottleneck for Uber's 11:54:21</p> <p>16 entire AV program? 11:54:25</p> <p>17 A Well, I -- I haven't assumed that, but I 11:54:27</p> <p>18 can draw that conclusion based on Dr. Hesselink's 11:54:29</p> <p>19 opinion and the fact that -- this is very data 11:54:31</p> <p>20 intensive information to test [REDACTED], and I 11:54:34</p> <p>21 do believe my client spent far more than two years 11:54:38</p> <p>22 developing [REDACTED] 11:54:42</p> <p>23 Q And if, in fact, Trade Secret 25 is not a 11:54:42</p> <p>24 bottleneck for the entire AV program, your damages 11:54:45</p> <p>25 model does not work? 11:54:49</p> <p style="text-align: right;">Page 111</p>	<p>1 Q But that's an absurd number for something 11:55:42</p> <p>2 that Uber doesn't use? 11:55:47</p> <p>3 MR. EISEMAN: Objection as to form 11:55:49</p> <p>4 A I don't know whether it's absurd -- absurd 11:55:50</p> <p>5 or not. If -- if Dr. Hesselink is right, then -- 11:55:50</p> <p>6 and it's on the critical path, then you -- that 11:55:52</p> <p>7 number is appropriate 11:55:54</p> <p>8 Q (BY MR. BERRY) And that would make Trade 11:55:55</p> <p>9 Secret 90 to be -- the most valuable trade secret 11:55:57</p> <p>10 in -- in your report, right? 11:56:01</p> <p>11 A It would 11:56:02</p> <p>12 Q And yet the report you signed in your 11:56:02</p> <p>13 opinion is that Trade Secret 90 is the least 11:56:07</p> <p>14 valuable trade secret? 11:56:09</p> <p>15 A I believe that's correct 11:56:11</p> <p>16 Q Why didn't you use your avoided cost 11:56:20</p> <p>17 method to value Trade Secret 90? 11:56:22</p> <p>18 A That -- there was this other method to 11:56:24</p> <p>19 look at an -- an acquisition that largely related to 11:56:27</p> <p>20 that -- that type of product 11:56:31</p> <p>21 Q When you say "largely related to that type 11:56:34</p> <p>22 of product," you're not referring to largely is 11:56:36</p> <p>23 Trade Secret 90, are you? 11:56:41</p> <p>24 MR. EISEMAN: Objection as to form 11:56:41</p> <p>25 A I'm sorry. I didn't understand the 11:56:42</p> <p style="text-align: right;">Page 113</p>

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1 question. 11:56:43
 2 Q (BY MR. BERRY) Let me -- I'll withdraw 11:56:43
 3 that question. 11:56:44
 4 So you used an entirely different model 11:56:48
 5 for Trade Secret 90, right? 11:56:50
 6 A Yes. And any other trade secrets. 11:56:52
 7 Q And you looked at the amount that Otto 11:56:54
 8 paid to acquire Tyto, right? 11:56:57
 9 A Yes. Minus the stock grants to the 11:57:00
 10 employees. 11:57:02
 11 Q So if we look at the total cash 11:57:02
 12 consideration that Otto paid to acquire Tyto, it's 11:57:05
 13 \$8 million, right? 11:57:11
 14 A Correct. 11:57:11
 15 Q For that 8 million in cash consideration, 11:57:12
 16 Otto received a number of benefits, right? 11:57:13
 17 A I agree with that. 11:57:17
 18 Q One type of benefit is it received six 11:57:19
 19 Tyto employees, right? 11:57:21
 20 A They did. 11:57:22
 21 Q Another type of benefit is that Otto 11:57:23
 22 received intellectual property from Tyto? 11:57:26
 23 MR. EISEMAN: Objection as to form? 11:57:28
 24 A I -- I -- I do believe there was some 11:57:29
 25 intellectual property. I don't recall seeing a 11:57:32
 Page 114

1 schedule of what it was. 11:57:34
 2 Q (BY MR. BERRY) In fact, sir, Otto received 11:57:35
 3 nine patent applications for that \$8 million that it 11:57:38
 4 paid to acquire Tyto? 11:57:42
 5 MR. EISEMAN: Objection as to form. 11:57:44
 6 A You know, I have some recollection of 11:57:45
 7 that, but I -- I believe you're telling me the facts 11:57:47
 8 that are correct. 11:57:50
 9 Q (BY MR. BERRY) And in fact, four of those 11:57:50
 10 patent applications were still pending at the time 11:57:52
 11 of the acquisition, right? 11:57:54
 12 A Again, I don't remember that level of 11:57:55
 13 detail. I do know -- and you have refreshed my 11:57:57
 14 recollection that there were some patent 11:57:59
 15 applications, but I don't remember the details. 11:58:00
 16 Q And, sir, you did nothing to try to value 11:58:02
 17 those patent applications, right? 11:58:04
 18 A No, I have not apportioned out that value. 11:58:06
 19 Q Did you read the patent applications? 11:58:09
 20 A No. I think re -- I think I recall 11:58:10
 21 reading the titles, but I don't recall -- I did not 11:58:12
 22 read the applications. 11:58:15
 23 Q Well, they obviously have some value, 11:58:16
 24 right? 11:58:19
 25 MR. EISEMAN: Objection as to form. 11:58:19
 Page 115

1 A They may or may not. A lot of patents are 11:58:21
 2 just more cost than value, but I would assume they 11:58:22
 3 have some value. 11:58:25
 4 Q (BY MR. BERRY) But you did no work to try 11:58:26
 5 to assess that value? 11:58:29
 6 A That is correct. 11:58:31
 7 Q In addition to the intellectual property 11:58:33
 8 of employees, Otto also received tangible property 11:58:35
 9 from acquisition of Tyto? 11:58:40
 10 A I think there probably was some tangible 11:58:43
 11 property, yes. 11:58:45
 12 Q And in fact, the tangible property 11:58:46
 13 includes all tools, equipment, parts and inventory 11:58:48
 14 used to build and assemble fiber lasers and laser 11:58:51
 15 scanners, right? 11:58:56
 16 A That's true. 11:58:57
 17 Q That property had value? 11:58:58
 18 A I would assume it has some value. 11:58:59
 19 Q What work did you do, sir, to value that 11:59:01
 20 property? 11:59:03
 21 A I didn't do any work. 11:59:04
 22 Q Do you know what tools were included? 11:59:05
 23 A No. 11:59:07
 24 Q Do you know what equipment was included? 11:59:08
 25 A I do not. 11:59:10
 Page 116

1 Q Do you know what parts and inventory was 11:59:10
 2 included? 11:59:13
 3 A No. 11:59:13
 4 Q And the tangible property also includes 11:59:14
 5 all equipment used to test and calibrate fiber 11:59:16
 6 lasers and laser scanners, right? 11:59:21
 7 A It does. 11:59:22
 8 Q What was the value of that equipment? 11:59:23
 9 A I have no information on that. 11:59:24
 10 Q Did you look into that? 11:59:27
 11 A No. 11:59:28
 12 Q So for -- to value Trade Secret 90, you 11:59:29
 13 applied the entire 8 million in cash consideration 11:59:31
 14 that Otto paid to acquire Tyto? 11:59:33
 15 A Yes. 11:59:35
 16 Q And you did not attempt, sir, to apportion 11:59:35
 17 out any value for the other benefits that Tyto 11:59:38
 18 received -- or that Otto received? 11:59:42
 19 A Correct. 11:59:43
 20 MR. EISEMAN: Objection as to form. 11:59:44
 21 A Again, and that's based on my 11:59:45
 22 understanding that I expect that Mr. Bratic would 11:59:46
 23 give me that information, and then I would consider 11:59:49
 24 it and possibly change my opinion. 11:59:50
 25 Q (BY MR. BERRY) My question, sir, is: You 11:59:53
 Page 117

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1 didn't do it? 11:59:53
 2 A That -- 11:59:57
 3 Q -- you did not apportion it? 11:59:57
 4 A -- that is correct. 11:59:59
 5 Q Let's look at your reasonable royalty 11:59:59
 6 opinion, please. 12:00:01
 7 MR. EISEMAN: Mr. Berry, you have got to 12:00:02
 8 slow down. Okay. I mean, it's not fair to the 12:00:04
 9 court reporter. 12:00:08
 10 Q (BY MR. BERRY) So -- so we already talked 12:00:08
 11 the Book of Wisdom, right? 12:00:10
 12 A We did. 12:00:11
 13 Q And you conclude it's appropriate, when 12:00:11
 14 determining a reasonable royalty, to apply the -- 12:00:17
 15 the logic from the Book of Wisdom? 12:00:19
 16 A I do. 12:00:22
 17 Q Sir, do you also agree that the cost to 12:00:28
 18 independently development a trade secret serves as 12:00:31
 19 an upper limit for the reasonable royalty? 12:00:34
 20 MR. EISEMAN: Objection as to form. 12:00:36
 21 A I do. 12:00:37
 22 Q (BY MR. BERRY) To arrive at a reasonable 12:00:40
 23 royalty, you started with a baseline royalty, right? 12:00:42
 24 A That's generally what I do. 12:00:47
 25 Q And the baseline royalty you used was the 12:00:48
 Page 118

1 accelerated development opinion of yours, right? 12:00:50
 2 A Yes. 12:00:52
 3 Q And then you applied the 15 12:00:56
 4 Georgia-Pacific factors to that baseline royalty, 12:01:00
 5 right? 12:01:03
 6 A Well, I really apply 14 factors. And the 12:01:03
 7 15th factor is the hypothetical negotiation where 12:01:06
 8 you consider the information in the 14 factors. 12:01:08
 9 Q Let's look at the -- Factor 8 looks at the 12:01:11
 10 established profitability of the product embodying 12:01:15
 11 the trade secrets, its commercial success, and its 12:01:20
 12 current popularity, right? 12:01:23
 13 A Yes. 12:01:26
 14 Q And Factor 8 talks about the product 12:01:26
 15 embodying the trade secrets. And here, sir, that 12:01:29
 16 product is Uber's AV program, right? It -- let me 12:01:31
 17 -- 12:01:35
 18 MR. EISEMAN: Objection. 12:01:36
 19 Q (BY MR. BERRY) -- ask a different 12:01:36
 20 question. The product here is Uber's autonomous 12:01:37
 21 vehicle? 12:01:40
 22 MR. EISEMAN: Objection as to form. 12:01:40
 23 A Right. The autonomous vehicle that will 12:01:41
 24 be introduced commercially in the future. 12:01:43
 25 Q (BY MR. BERRY) That autonomous vehicle 12:01:47
 Page 119

1 that will be introduced sometime in the future has 12:01:48
 2 no established profitability, right? 12:01:51
 3 A I agree with that. 12:01:54
 4 Q And that autonomous vehicle that's going 12:01:54
 5 to be introduced at some point in the future has no 12:01:57
 6 current commercial success? 12:02:01
 7 A Correct. 12:02:05
 8 Q And that autonomous vehicle has no current 12:02:05
 9 popularity? 12:02:08
 10 A Only in theory, not in -- in practice. 12:02:12
 11 Q Factor 11 looks at the extent to which the 12:02:18
 12 infringer has made use of the invention and any 12:02:23
 13 evidence probative -- probative of the value of that 12:02:26
 14 use, right? 12:02:30
 15 A Yes. 12:02:31
 16 Q And your baseline royalty already looks at 12:02:31
 17 the value of the use from the perspective of Uber, 12:02:36
 18 right? 12:02:40
 19 A It does. 12:02:42
 20 Q And so the value of that use is already 12:02:43
 21 incorporated into your reasonable royalty through 12:02:45
 22 the baseline? 12:02:49
 23 A In part. 12:02:49
 24 Q What part is not? 12:02:50
 25 A The -- I used the most conservative 12:02:51
 Page 120

1 assumptions. And there's -- I didn't even use 12:02:54
 2 the -- like, the average base case. And there's 12:02:57
 3 also optimistic projections. And if you -- if you 12:03:01
 4 appropriately risk adjust all of those and come up 12:03:04
 5 with a present value, the number would be higher 12:03:07
 6 than my baseline. And that's what I'm talking about 12:03:09
 7 in GP Factor No. 11. 12:03:11
 8 Q But the profits from the accelerated 12:03:14
 9 development model are already incorporated in the 12:03:20
 10 baseline, right? 12:03:22
 11 A As -- as I just explained it, yes. I 12:03:24
 12 agree with that. 12:03:26
 13 Q Based upon your analysis of the 12:03:30
 14 Georgia-Pacific factors, you concluded it was 12:03:31
 15 reasonable to adjust upward by 10 percent, the 12:03:34
 16 reasonable royalty, right? 12:03:38
 17 A I did. 12:03:40
 18 Q How did you calculate 10 percent? 12:03:41
 19 A Well, you -- first, you assumed a fact not 12:03:43
 20 in evidence that I calculated it. Listen, I have 12:03:45
 21 been doing this for 40 years. I have seen hundreds 12:03:47
 22 of Georgia-Pacific analyses. I have never seen a, 12:03:50
 23 quote, calculation of an adjustment from a baseline. 12:03:53
 24 Q So let me -- 12:03:56
 25 A The quality -- the Georgia-Pacific factors 12:03:57
 Page 121

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1 are qualitative mostly in nature. Some -- in some 12:03:59	1 A I did not. 12:06:08
2 fact situations you can quantify some of it. 12:04:04	2 Q And your reasonable royalty opinion 12:06:13
3 But it's qualitative. It's just like in 12:04:08	3 assumes that the court will not grant a permanent 12:06:16
4 the real world where two parties negotiate over a 12:04:11	4 injunction, right? 12:06:18
5 table about a royalty rate. They -- they all 12:04:14	5 A I -- I believe that's correct. 12:06:20
6 overstate their strengths, understate their 12:04:16	6 Q And if the court -- if the court were to 12:06:20
7 weaknesses. Both sides are doing that. 12:04:19	7 grant a permanent injunction, your reasonable 12:06:23
8 All the facts are then considered and 12:04:21	8 royalty opinion would no longer be applicable? 12:06:26
9 discussed, and a judgment is made as to what the 12:04:24	9 A I -- I think there would have to be 12:06:28
10 number will be. That's the same that I did here. 12:04:29	10 adjustments to it. 12:06:30
11 I had -- it's based on the facts in my 12:04:33	11 Q Sir, did you interview anybody between the 12:06:32
12 Georgia-Pacific analysis discussion, and then it's 12:04:36	12 time of your Opening Report and your Reply Report? 12:06:34
13 based on applying my professional judgment to that 12:04:39	13 A No. If you're talking about, like, at my 12:06:38
14 information to arrive at that number, which I 12:04:42	14 client, no. Or an expert, no. 12:06:40
15 thought was a conservative number. 12:04:44	15 Q And, sir, do you have any notes from any 12:06:42
16 MR. BERRY: Move to strike as 12:04:48	16 interviews that you have done in this case? 12:06:44
17 nonresponsive. 12:04:48	17 A Yes. 12:06:48
18 Q (BY MR. BERRY) Sir, did you calculate the 12:04:48	18 Q What types of notes? 12:06:49
19 10 percent adjustment? 12:04:50	19 A Well, when I had telephone -- the various 12:06:51
20 MR. EISEMAN: Objection -- objection as to 12:04:52	20 telephone communications, I -- I ex -- frequently 12:06:53
21 form. 12:04:52	21 would write some notes down of things I wanted to 12:06:57
22 A No, I didn't calculate it. 12:04:53	22 remember. 12:07:01
23 Q (BY MR. BERRY) Did you base it upon a 12:04:54	23 Q And did you consider those notes at 12:07:01
24 comparable license? 12:04:56	24 arriving at your opinions in this case? 12:07:03
25 A No. As -- if you read my report, you 12:04:59	25 A No. 12:07:05
Page 122	
1 would know in GP Factors 1 and 2, I said they were 12:05:01	1 Q Not at all? 12:07:05
2 neutral because there were none. 12:05:06	2 A No 12:07:06
3 Q A 10 percent upward adjustment will result 12:05:08	3 Q In arriving at your opinions in this case, 12:07:07
4 in a 110 percent royalty rate, right? 12:05:12	4 did you con -- did you look at those notes? 12:07:08
5 A In -- 12:05:16	5 A I don't think I have looked at them since 12:07:12
6 MR. EISEMAN: Objection as to form. 12:05:16	6 I wrote them 12:07:13
7 A -- relationship to the unjust enrichment 12:05:16	7 MR. BERRY: Well, we request that they be 12:07:15
8 calculation, yes. 12:05:20	8 produced 12:07:18
9 Q (BY MR. BERRY) And, sir, you applied the 12:05:27	9 MR. EISEMAN: Why don't you put it in an 12:07:18
10 same -- let me ask you a different question. 12:05:31	10 e-mail and we'll get back to you about it 12:07:18
11 You looked at all nine trade secrets 12:05:35	11 MR. BERRY: Well, sir, that's all the 12:07:21
12 together when applying the Georgia-Pacific factors 12:05:38	12 questions I have for you today I appreciate your 12:07:22
13 right? 12:05:42	13 time I believe that other people might have 12:07:23
14 A I did. 12:05:43	14 questions or -- 12:07:26
15 Q You did not do a separate Georgia-Pacific 12:05:43	15 MR. SCHUMAN: I have some -- I have some 12:07:29
16 factor for each trade secret? 12:05:46	16 questions I don't think it'll take very long If 12:07:29
17 A That is accurate. 12:05:48	17 it's okay with the court reporter and the 12:07:32
18 Q And, sir, you applied the same 10 percent 12:05:49	18 videographer and the witness, I would prefer to 12:07:34
19 upward adjustment to each of the nine trade secrets? 12:05:51	19 just -- instead of taking a lunch break -- 12:07:36
20 A I did. 12:05:54	20 MR. BERRY: Yeah, me too 12:07:39
21 Q And, sir, for a reasonable royalty, you 12:05:56	21 THE VIDEOGRAPHER: It would be better, 12:07:41
22 only opine on a lump-sum royalty, right? 12:05:59	22 though, if you could come down here photographic and 12:07:41
23 A I do. 12:06:02	23 audio purposes Shall we go off the record or -- 12:07:44
24 Q You did not arrive at any conclusions for 12:06:03	24 MR. BERRY: No I can move 12:07:47
25 any running royalty? 12:06:05	25 MR. SCHUMAN: I'm not on the -- 12:07:49
Page 123	
Page 124	
Page 125	

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1 A Yeah, but I -- he thinks -- he thinks my 12:07:51	1 values the accelerated development to -- that Uber 12:10:05
2 profile is not as good as my straight face 12:07:53	2 was able to achieve through the alleged 12:10:10
3 THE VIDEOGRAPHER: What he said Do you 12:07:57	3 misappropriation of these nine trade secrets, right? 12:10:13
4 want to stay on or -- we can stay on 12:07:59	4 A Yes. 12:10:16
5 EXAMINATION BY COUNSEL FOR THE DEFENDANTS 12:08:03	5 Q And -- and your opinion -- that -- we'll 12:10:17
6 BY MR. SCHUMAN: 12:08:04	6 call that your first unjust enrichment opinion. 12:10:20
7 Q All right Good afternoon, Mr. Wagner 12:08:07	7 That opinion is based on internal Uber 12:10:24
8 A Good afternoon, Mr. Schuman 12:08:10	8 documents showing some accelerated development, 12:10:28
9 Q Mr. Wagner, I represent a company called 12:08:14	9 correct? 12:10:31
10 Otto Trucking LLC Do you know who Otto Trucking 12:08:16	10 A That's fair. 12:10:32
11 is? 12:08:18	11 Q That opinion is not based on any Otto 12:10:34
12 A I do 12:08:19	12 Trucking documents; is that right? 12:10:36
13 Q Who is Otto -- what's your understanding 12:08:20	13 A It is not. 12:10:40
14 of who Otto Trucking is? 12:08:21	14 Q So would you agree with me then that your 12:10:42
15 A Well, I -- I believe it's a company that's 12:08:23	15 first unjust -- unjust enrichment theory is not 12:10:45
16 owned by -- principally owned by Mr. Levandowski and 12:08:25	16 applicable to Otto Trucking? 12:10:48
17 Lior 12:08:32	17 MR. EISEMAN: Objection as to form. 12:10:50
18 And it is in -- has signed an -- an 12:08:34	18 A You know, I -- what I would say is that 12:10:51
19 acquisition of purchase agreement with Uber where 12:08:37	19 unless Uber exercises its option to purchase Otto 12:10:56
20 it -- it's Uber's discretion to purchase that 12:08:42	20 Trucking or shares this accelerated depreciation -- 12:11:01
21 company between now and sometime in November And 12:08:45	21 or accelerated development with Otto Trucking, then 12:11:04
22 it is a company that is focused on applying LiDAR 12:08:48	22 my calculations have nothing to do with your client. 12:11:10
23 technology to trucks 12:08:52	23 Q (BY MR. SCHUMAN) Right. And as we sit 12:11:15
24 Q Do you know whether Otto Trucking has any 12:08:56	24 here today, you know that Uber has not exercised the 12:11:15
25 employees? 12:08:58	25 option to the purchase Otto Trucking, right? 12:11:18
Page 126	Page 128
1 A Well, my understanding is they do not, at 12:08:59	1 A I -- I don't know that. But those facts 12:11:21
2 least from the last facts that I have. 12:09:01	2 have not been brought to my attention. And if it 12:11:23
3 Q Do you have any understanding as to 12:09:04	3 had happened, I fully expect I would be aware of it. 12:11:26
4 whether Otto Trucking does any research and 12:09:04	4 Q Right. And the accelerated -- sharing the 12:11:30
5 development activities? 12:09:07	5 accelerated development with Otto Trucking, what did 12:11:33
6 A I -- I -- I don't know whether they do or 12:09:12	6 you mean by that? 12:11:36
7 not. I understand that Uber is advancing 12:09:15	7 A Well, if -- if -- if as a result of Uber 12:11:36
8 development funds to them, so I -- I would think 12:09:18	8 accelerating development of LiDAR on their veh -- on 12:11:43
9 they do. But whether that's done with -- actually 12:09:21	9 their vehicles for their transportation as a 12:11:46
10 being done by Uber and not your client, I -- I don't 12:09:25	10 service, they -- they're also -- then by Otto 12:11:48
11 know. 12:09:28	11 Trucking -- and Otto Trucking is going to get into 12:11:51
12 Q Okay. You're not offering any opinions in 12:09:29	12 the market one or two years earlier than they 12:11:54
13 this case as to any damages caused to Waymo specific 12:09:31	13 otherwise would -- then I think it might be 12:11:58
14 to Otto Trucking; is that right? 12:09:36	14 appropriate to your client. But unless those facts 12:12:00
15 A That's correct. 12:09:38	15 occur, what I have calculated has nothing to do with 12:12:03
16 Q Okay. And so then your damages -- I'm 12:09:38	16 your client. 12:12:05
17 going to walk through briefly -- not in the level of 12:09:44	17 Q All right. And as we sit here today, you 12:12:06
18 detail that Uber's counsel did, but I just want to 12:09:46	18 do know that those facts that you have just in your 12:12:07
19 walk through your -- your principal opinions in this 12:09:48	19 last answer summarized have not occurred yet, right? 12:12:10
20 case. 12:09:50	20 A That's correct. 12:12:13
21 You have offered two unjust enrichment 12:09:50	21 Q Your second unjust enrichment calculation 12:12:14
22 calculations and a -- and a reasonable royalty 12:09:55	22 is based on the cost that -- that you have opined 12:12:16
23 measure, correct? 12:09:59	23 Uber saved in its development of autonomous vehicles 12:12:20
24 A That's fair. 12:10:00	24 through alleged use of these nine trade secrets, 12:12:25
25 Q Okay. The first unjust enrichment measure 12:10:01	25 right? 12:12:29
Page 127	Page 129

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1	A	Yes	12:12:29	1	be representing their interests at that point. But	12:14:38
2	Q	And again, that's based on Uber documents	12:12:29	2	I -- that's only way I see my work as relevant to	12:14:41
3		showing a \$20 million per-month run rate for its R&D	12:12:33	3	your client.	12:14:44
4		program on autonomous vehicles, right?	12:12:39	4	Q (BY MR. SCHUMAN) Right. So the same	12:14:49
5	A	Yeah, documents and I believe deposition	12:12:42	5	caveat -- the same caveats that you're referring to	12:14:49
6		testimony of Mr Bares	12:12:44	6	in that answer are -- are the sort of -- we'll call	12:14:51
7	Q	Fair Right And -- and so your second	12:12:45	7	them speculative future possibility that Uber	12:14:54
8		unjust enrichment calculation is not based on any	12:12:48	8	acquires Otto Trucking and shares some of these	12:14:58
9		Otto Trucking-specific evidence; is that fair?	12:12:50	9	benefits that you have quantified with Otto Trucking	12:15:01
10	A	That is fair	12:12:55	10	in the future; is --	12:15:04
11	Q	So your second unjust enrichment	12:12:55	11	MR. EISEMAN: Objection.	12:15:05
12		calculation, would you agree with me, is not	12:12:57	12	Q (BY MR. SCHUMAN) -- that --	12:15:05
13		applicable to Otto Trucking?	12:13:00	13	MR. EISEMAN: Objection. Sorry.	12:15:06
14		MR EISEMAN: Objection as to form	12:13:02	14	Q (BY MR. SCHUMAN) Am I --	12:15:07
15	A	Yes, with the same caveats as I discussed	12:13:02	15	MR. EISEMAN: Objection as to form.	12:15:09
16		on the first calculation	12:13:05	16	Q (BY MR. SCHUMAN) I didn't ask the question	12:15:09
17	Q	(BY MR. SCHUMAN) Right So assume --	12:13:07	17	yet. Do you understand that -- do I understand your	12:15:10
18		assume for purposes of this question that Otto	12:13:08	18	caveats correctly?	12:15:14
19		Trucking pays Uber some amount of money for the work	12:13:11	19	MR. EISEMAN: Objection as to form.	12:15:15
20		that Uber employees are -- are doing on	12:13:18	20	A Yes. If you took just the	12:15:16
21		autonomous -- the development of autonomous trucks	12:13:22	21	word "speculative" out of your question, I would	12:15:18
22		Have you seen any evidence in the	12:13:25	22	agree with what you said.	12:15:21
23		materials you reviewed as to what Otto Trucking's	12:13:28	23	I mean -- yeah, I don't know whether	12:15:24
24		burn rate is for that development?	12:13:32	24	they're going to get acquired or not. But you know,	12:15:25
25	A	No	12:13:35	25	clearly your -- your client is -- is getting a lot	12:15:27
Page 130				Page 132		
1	Q	Okay. Did -- on the list of materials you	12:13:36	1	of funds from Uber Uber is forwarding -- committed	12:15:29
2		reviewed or at least considered is the Brent Schwarz	12:13:39	2	to forward a lot of funds to your client There --	12:15:32
3		deposition.	12:13:44	3	there is a -- a deal done that your client -- client	12:15:34
4		Do you recall reviewing any portions of	12:13:45	4	will have to accept and Uber can force on your	12:15:38
5		Mr. Schwarz's deposition?	12:13:47	5	client, if they want to	12:15:41
6	A	I personally do not.	12:13:48	6	I don't know what their mind-set is right	12:15:43
7	Q	You have a separate section of your	12:13:55	7	now, and I don't know how much development on the	12:15:45
8		report -- and we were just covering this with Uber's	12:13:58	8	truck has been done as to whether Uber believes it's	12:15:47
9		counsel -- unjust enrichment related to Trade Secret	12:14:02	9	appropriate to purchase your client	12:15:51
10		No. 90. And I think you have an \$8 million unjust	12:14:04	10	So I don't think it's wild speculation,	12:15:54
11		enrichment figure for that; is --	12:14:08	11	but I clearly do not know whether it will happen or	12:15:56
12	A	Yes --	12:14:10	12	not But then all the caveats apply	12:16:00
13	Q	-- that right?	12:14:10	13	Q (BY MR. SCHUMAN) Right So fair enough	12:16:03
14	A	-- that's correct.	12:14:11	14	Taking out the word "speculative " I know we don't	12:16:03
15	Q	And that is -- that -- is that based on	12:14:12	15	like using that word The caveats you're referring	12:16:06
16		any Otto Trucking documents or evidence?	12:14:15	16	to regarding the applicability of your unjust	12:16:09
17	A	No.	12:14:17	17	enrichment damage theories, those caveats are Uber	12:16:12
18	Q	Does that theory have any applicability to	12:14:18	18	acquires Otto Trucking and that Uber shares some of	12:16:17
19		Otto Trucking?	12:14:20	19	the technology it's developing using the allegedly	12:16:21
20		MR. EISEMAN: Objection as to form.	12:14:21	20	misappropriated trade secrets with Otto Trucking; is	12:16:25
21	A	You know, I -- no, again, with the same	12:14:22	21	that right?	12:16:28
22		caveats. And -- and I personally believe that my	12:14:26	22	A That's -- that's -- again, that's my	12:16:28
23		work is only relevant unless client is -- you will	12:14:28	23	conclusion -- or that would be my opinion as a	12:16:30
24		have no role at the trial, because your client will	12:14:32	24	damage expert	12:16:33
25		be owned by Uber. And I assume Uber's counsel will	12:14:35	25	Q If both of those assumptions are true,	12:16:33
Page 131				Page 133		

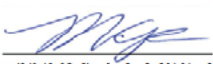
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1 then your damages opinions -- your unjust enrichment 12:16:36	1 projections from Otto Trucking, right? 12:18:51
2 damages opinions may have some applicability to Otto 12:16:39	2 A Correct I don't believe I have seen any 12:18:52
3 Trucking, correct? 12:16:41	3 projections for your client -- 12:18:54
4 MR. EISEMAN: Objection as to form. 12:16:44	4 Q Right 12:18:56
5 A That's fair. 12:16:44	5 A -- and so I poss -- I could not have 12:18:56
6 Q (BY MR. SCHUMAN) You also have a 12:16:49	6 possibly considered them 12:18:58
7 reasonable royalty rate calculation, and that 12:16:52	7 Q Okay You answered my next question, so 12:18:59
8 measures the amount that Uber would have agreed to 12:16:55	8 that'll make us go a little faster 12:19:01
9 pay Waymo in this hypothetical negotiation set in 12:16:57	9 Factor 11 talks about the extent of the 12:19:04
10 the -- somewhere in the December 15 -- August -- 12:17:01	10 use of the invention This is addressed at 12:19:06
11 between December '15 and August 2016 time period, 12:17:04	11 paragraphs 424 and 428 of your report And again, 12:19:09
12 right? 12:17:08	12 you find that that factor pushes the base -- the -- 12:19:12
13 A Correct. 12:17:09	13 the reasonable royalty baseline up a little bit 12:19:13
14 Q You didn't do any separate calculation of 12:17:09	14 because of your assumptions based on the work of 12:19:17
15 the amount that Otto Trucking would have agreed to 12:17:11	15 others that -- that Uber has used these trade 12:19:21
16 pay Waymo at a hypothetical negotiation set during 12:17:15	16 secrets, right? 12:19:24
17 that same time period, correct? 12:17:20	17 A Yes 12:19:25
18 A That is accurate. 12:17:22	18 Q And you -- you have not done or are -- at 12:19:28
19 Q Okay. And then for the reasonable royalty 12:17:23	19 least -- have -- have you seen any evidence of any 12:19:30
20 calculation that you did, you start with a baseline 12:17:25	20 use of any of these trade secrets by my client, Otto 12:19:33
21 of Uber's unjust enrichment. And then you adjusted 12:17:28	21 Trucking? 12:19:36
22 upward based on some analysis you have done of 12:17:32	22 MR EISEMAN: Objection as to form 12:19:37
23 certain of the Georgia-Pacific factors. Namely 4, 12:17:36	23 A I have not 12:19:37
24 5, 6, 8, and 11, correct? 12:17:38	24 Q (BY MR SCHUMAN) And so your analysis of 12:19:41
25 A Those are the only ones that had any 12:17:42	25 Factor 11 is inapplicable to my client, Otto 12:19:42
Page 134	Page 136
1 impact on changing the number from the baseline 12:17:45	1 Trucking, right? 12:19:46
2 That is correct 12:17:47	2 MR EISEMAN: Objection as to form 12:19:47
3 Q And -- and Factor 5 -- this is addressed 12:17:48	3 A Based on the information that I have at 12:19:48
4 in your report at paragraphs 399 to 401 -- that -- 12:17:52	4 this time, that is correct 12:19:50
5 that factor deals with the commercial relationship 12:17:55	5 Q (BY MR SCHUMAN) Okay Mr Wagner, if the 12:19:53
6 between Waymo and Uber and some documents that you 12:17:58	6 jury finds that -- and this is the hypothetical, so 12:19:55
7 referred regarding the -- the potential competitive 12:18:02	7 it's -- follow me here If the jury finds that Uber 12:19:57
8 relationship between those two companies, right? 12:18:08	8 and Ottomotto -- strike that I'm going to start 12:20:01
9 A Yes 12:18:10	9 over 12:20:05
10 Q That analysis in Factor 5 is -- is 12:18:11	10 Hypothetical: If at trial in this case 12:20:05
11 inapplicable to -- to my client Otto Trucking -- 12:18:13	11 the jury finds in favor of Uber -- Uber and 12:20:06
12 A Yeah -- 12:18:16	12 Ottomotto -- so a defense verdict for them -- but 12:20:10
13 Q -- correct? 12:18:16	13 against Otto Trucking on liability, what's your 12:20:13
14 A -- as discussed in my report, that is 12:18:16	14 opinion as to the damages that Waymo would be 12:20:17
15 correct 12:18:19	15 entitled to as to my client, Otto Trucking? 12:20:20
16 Q Right And -- and Factor 8 deals with 12:18:20	16 MR EISEMAN: Objection as to form 12:20:23
17 expected future profitability And you analyzed 12:18:25	17 A I would need more facts to know if there's 12:20:24
18 Waymo's and Uber's projections for profitability of 12:18:29	18 any relevance of what I have done would apply to 12:20:25
19 autonomous vehicles 12:18:36	19 your client in that hypothetical 12:20:28
20 And in your view, that factor counseled in 12:18:36	20 Q (BY MR SCHUMAN) So as you sit here today 12:20:30
21 favor of some enhancement to the baseline for the 12:18:38	21 based on the work you have done so far up to and 12:20:32
22 reasonable royalty calculation, right? 12:18:42	22 including today, you don't have an opinion of what 12:20:35
23 A That's fair 12:18:44	23 damages Waymo would be entitled to under that 12:20:38
24 Q Okay And -- and you were working with 12:18:45	24 hypothetical verdict -- 12:20:40
25 Waymo and Uber projections there, not any 12:18:48	25 MR EISEMAN: Objection 12:20:41
Page 135	Page 137

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1	Q (BY MR SCHUMAN) -- is that fair?	12:20:41	1	A Well, you know, I -- well, let me -- let	12:23:06
2	MR EISEMAN: Objection as to form	12:20:43	2	me give you an example of another case that I	12:23:07
3	A I do not	12:20:43	3	testified in last year in a similar fact situation	12:23:10
4	Q (BY MR SCHUMAN) In -- in response to some	12:20:44	4	of this case where there's no product in the market	12:23:13
5	of the questions you got from Uber's counsel, you --	12:20:50	5	yet. There's regulatory approvals that need to be	12:23:16
6	you mentioned that you personally spent	12:20:55	6	done that weren't done yet; that there would be no	12:23:20
7	approximately 64 hours total working on -- working	12:20:58	7	commercialization for years into the future. And I	12:23:21
8	on your opinions in this case Obviously, your	12:21:01	8	had the business plans of the company that took the	12:23:24
9	staff spent many more hours than that	12:21:04	9	trade secrets.	12:23:30
10	Approximately what percentage of your	12:21:06	10	Now, there they provided me the model, and	12:23:31
11	64 hours, Mr Wagner, did you spend focusing on	12:21:09	11	they never made a calculation of what the impact	12:23:36
12	calculating damages specific to my client, Otto	12:21:14	12	would be on them to accelerate the development by	12:23:39
13	Trucking?	12:21:16	13	any amount of time. I had to get into their model,	12:23:43
14	A Zero	12:21:17	14	understand the logic, and make that calculation	12:23:46
15	Q Just bear with me a second	12:21:25	15	myself.	12:23:47
16	A But I could -- the approximate -- it's	12:21:27	16	In this case I have the same thing in that	12:23:49
17	exactly 64 0 hours through September 15 And it's	12:21:30	17	I have projections done at the time of the alleged	12:23:51
18	been 13 4 hours since then before today	12:21:36	18	theft by the party who was alleged to have taken the	12:23:55
19	Q I would --	12:21:39	19	trade secrets.	12:23:59
20	A -- between September 15 and today	12:21:40	20	But they have even gone to the next step	12:24:01
21	Q In response to some questions from Uber's	12:21:44	21	of actually quantifying the impact of acceleration,	12:24:04
22	counsel, I think you made clear that your damages	12:21:45	22	and so that's why I say it's the Rosetta Stone.	12:24:07
23	are based on Uber's use of -- alleged use of the	12:21:46	23	Normally I have to do more work than I did in this	12:24:09
24	trade secrets in its development of its autonomous	12:21:53	24	case, but Uber has done it for me.	12:24:12
25	vehicles	12:21:56	25	Q Right. And have you seen any similar	12:24:17
Page 138			Page 140		
1	If the evidence at trial shows that my	12:22:01	1	documents from my client, Otto Trucking?	12:24:20
2	client, Otto Trucking, has not used any of those	12:22:04	2	A I knew that was next question The answer	12:24:23
3	trade secrets, would you agree with me that your	12:22:07	3	is no And you're closing the loop	12:24:25
4	opinions are irrelevant to Otto Trucking?	12:22:10	4	MR SCHUMAN: Why don't we take a	12:24:32
5	MR EISEMAN: Objection as to form	12:22:13	5	two-minute break I don't think I have anything	12:24:33
6	A I'm not giving you a legal opinion But	12:22:16	6	more, but why don't we just --	12:24:36
7	as -- my judgment as a damage expert, you are	12:22:17	7	MR BERRY: I actually have a couple of	12:24:36
8	correct	12:22:20	8	questions	12:24:38
9	Q (BY MR SCHUMAN) You mentioned that you	12:22:29	9	MR SCHUMAN: Well, I'm not sure I'm done	12:24:38
10	had documents in this case from Uber with its own	12:22:31	10	yet I just want to --	12:24:40
11	modeling of the benefits of -- of -- well, let me --	12:22:38	11	MR BERRY: Okay	12:24:41
12	let me ask it -- strike that Let me start that	12:22:44	12	MR SCHUMAN: -- take a two-minute break	12:24:41
13	question again	12:22:47	13	and make sure And then if you have something else	12:24:41
14	Do you remember some testimony you gave in	12:22:48	14	MR BERRY: Okay	12:24:44
15	response to Uber's counsel where you characterized	12:22:49	15	MR SCHUMAN: -- you guys can take that	12:24:45
16	some of the information you got from -- that you	12:22:52	16	up	12:24:46
17	were able to review from Uber as the Rosetta Stone	12:22:55	17	THE VIDEOGRAPHER: It's 12:24 p m We're	12:24:47
18	in your field?	12:22:57	18	going off the record	12:24:49
19	Do you remember that --	12:22:59	19	(A break was taken from 12:24 p m to	12:24:51
20	A I --	12:22:59	20	12:28 p m)	12:25:12
21	Q -- testimony?	12:22:59	21	THE VIDEOGRAPHER: We are back on the	12:28:09
22	A -- do remember that	12:23:00	22	record It's 12:28 p m	12:28:09
23	Q And -- and what is the information again	12:23:01	23	Q (BY MR SCHUMAN) Mr Wagner, did either	12:28:15
24	that you characterize as being the Rosetta Stone in	12:23:03	24	the Quinn firm or Waymo ask you or your firm to	12:28:17
25	your field?	12:23:05	25	prepare any damages opinions specific to my client,	12:28:22
Page 139			Page 141		

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1 Otto Trucking? 12:28:27	1 off the record. 12:30:37
2 A I don't recall that specific instruction 12:28:28	2 (Off video record.) 12:30:37
3 Q As you sit here today, do you plan to do 12:28:31	3 MR. BERRY: Please go ahead and mark this 12:30:42
4 any work between now and the time of trial on 12:28:33	4 AEO. 12:30:44
5 developing opinions regarding damages specific to my 12:28:38	5 MR. EISEMAN: Right. And we'll handle the 12:30:46
6 client, Otto Trucking? 12:28:45	6 actual redactions consistent with the judge's 12:30:47
7 A No 12:28:46	7 practice in the case. 12:30:51
8 MR. SCHUMAN: Okay I have no further 12:28:47	8 12:30:52
9 questions for you Thank you for your time 12:28:49	9 (TIME NOTED: 12:30 p.m.) 12:30:52
10 A Thank you 12:28:52	10
11 MR. EISEMAN: Mr. Berry, what do you 12:28:56	11
12 consider this -- these questions? Do you consider 12:28:58	12
13 them to be redirect? 12:28:59	13
14 MR. BERRY: I haven't even thought about 12:29:02	14
15 how to characterize it 12:29:03	15
16 EXAMINATION BY COUNSEL FOR THE DEFENDANTS 12:29:08	16
17 BY MR. BERRY: 12:29:12	17
18 Q Mr. Wagner, I had a -- a couple of 12:29:12	18
19 questions The first is: Your opinions in this 12:29:13	19
20 case assume that Uber is going to go to market and 12:29:15	20
21 commercialize its AV technology using the Fuji 12:29:19	21
22 LiDAR, right? 12:29:23	22
23 MR. EISEMAN: Objection as to form 12:29:24	23
24 A I -- again, I -- I think that's assumed 12:29:24	24
25 But again, that's a better question for 12:29:27	25
Page 142	Page 144
1 Dr. Hesselink. But that's the current product that 12:29:30	1 I, MARY J. GOFF, CSR No. 13427, Certified
2 I believe he is the opinion uses the trade secrets. 12:29:33	2 Shorthand Reporter of the State of California,
3 Q (BY MR. BERRY) And you rely on 12:29:38	3 certify;
4 Dr. Hesselink on -- 12:29:41	4 That the foregoing proceedings were taken
5 A I do. 12:29:41	5 before me at the time and place herein set forth, at
6 Q -- that? And if Uber does, in fact, does 12:29:41	6 which time the witness declared under penalty of
7 not go to market with the Fuji LiDAR, your opinion 12:29:43	7 perjury; that the testimony of the witness and all
8 is they are not applicable, right? 12:29:46	8 objections made at the time of the examination were
9 MR. EISEMAN: Objection as to form. 12:29:48	8 recorded stenographically by me and were thereafter
10 A Incomplete hypothetical. If they then do 12:29:49	9 transcribed under my direction and supervision; that
11 something else that has no use of the trade secrets, 12:29:51	10 the foregoing is a full, true, and correct
12 the answer would be yes. 12:29:54	11 transcript of my shorthand notes so taken and of the
13 Q (BY MR. BERRY) For example, if Uber were 12:29:55	12 testimony so given;
14 to go back to -- and use Velodyne and go to market 12:29:57	13 That before completion of the deposition,
15 with Velodyne LiDAR, there would be no damages, 12:30:01	14 review of the transcript () was (XX) was not
16 right? 12:30:04	15 requested: () that the witness has failed or
17 MR. EISEMAN: Objection as to form. 12:30:04	16 refused to approve the transcript.
18 A Again, as a damage expert, that would be 12:30:05	17 I further certify that I am not financially
19 my opinion, if you asked me. 12:30:07	17 interested in the action, and I am not a relative or
20 MR. BERRY: No further questions. Thank 12:30:09	18 employee of any attorney of the parties, nor of any
21 you. 12:30:10	19 of the parties.
22 THE VIDEOGRAPHER: All right. This will 12:30:12	20 I declare under penalty of perjury under the
23 conclude the deposition of Mr. Wagner, consisting of 12:30:15	21 laws of California that the foregoing is true and
24 two original video discs, which will be retained by 12:30:18	22 correct, dated this 23rd day of September, 2017.
25 Veritext. The time is 12:30 p.m., and we're going 12:30:23	23
Page 143	24
	25  MARY J. GOFF, CSR No. 13427
	Page 145